

“*absorb and swallow up*” the state courts became common.¹⁷ While LaCroix primarily focuses on the controversy surrounding the creation of lower federal courts, she confirms that the judiciary’s role in the new nation was hotly contested. And as the Court under Marshall’s leadership quickly arose as a, if not the, key mechanism in clawing back state power in favor of that of “the people,”¹⁸ any perceived deficiency in the Court’s authority would benefit those who wished to preserve state sovereignty.

One of the major potential deficiencies of the Court was the fact that its power was largely self-defining. Though Article III broadly outlined the role of the federal courts, the concepts of judicial review and the Supreme Court’s supremacy over state courts in interpreting the Constitution were neither obvious nor spelled out in the document itself. In fact, only “*some members of the founding generation*” believed that the Supreme Court would have the power to review actions by state courts and legislatures.¹⁹ Accordingly, the Court’s decisions in *Marbury v. Madison*²⁰ and *Martin v. Hunter’s Lessee*²¹ could be read as inventive power grabs perhaps even more easily than they could be read as legitimate constitutional interpretation—and they were read this way by many, as demonstrated by Spencer Roane’s “Hampden” essays in the *Richmond Enquirer*, which lauded the Supreme Court as “a tribunal of great and commanding authority” but declined to receive its decisions as those of “the law and the prophets.”²² Roane instead opted to push back against the Supreme Court’s assertions of jurisdiction, positing that if “this power [to override state law] was intended to be given, would it not have been expressly provided for in the constitution?”²³ In sum, there was a not-unfair view in the decades after the

¹⁷ *Id.* at 183.

¹⁸ *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819).

¹⁹ LACROIX, *supra* note 15, at 182 (emphasis added).

²⁰ 5 U.S. (1 Cranch) 137 (1803) (holding that the Supreme Court has the power of judicial review).

²¹ 14 U.S. (1 Wheat.) 304 (1816) (asserting Supreme Court authority over state courts in matters of federal law).

²² GERALD GUNTHER, JOHN MARSHALL’S DEFENSE OF *MCCULLOCH V. MARYLAND* 107 (1969).

²³ *Id.* at 153.

ratification that some of the early Supreme Court's most pivotal decisions were extraconstitutional overreach.

A second challenge to the legitimacy of the federal courts was the opposition from state legislatures and state courts. South Carolina's 1832 Ordinance of Nullification purported not only to void a federal law in much the way that the federal courts could void state laws, but also to restrict South Carolinians' access to the Supreme Court.²⁴ Around the same time, Georgia repeatedly refused to submit to the Supreme Court's attempts to intervene in its disputes with the Cherokee nation.²⁵ These states were following in the footsteps of some of the Founders; Madison's Virginia Resolution²⁶ and Jefferson's Kentucky Resolution²⁷ had lent early validity to the idea that a state could nullify federal law without judicial oversight.

Finally, there were the calls coming from inside the house—challenges to the Supreme Court's authority from the national government itself. Early on, there was well-known speculation that Jefferson would have disregarded the decision in *Marbury v. Madison* had Marshall found the Court had jurisdiction in the case. Several decades later, Andrew Jackson rejected the premise that the Court was the final arbiter of the constitution and that its decisions bound the President.²⁸ This skepticism regarding the rightfulness of the Court's authority also appeared on the other side of the states' rights debate. Lincoln's inaugural address repudiated the *Dred Scott v. Sandford*²⁹ decision, contending that “if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme

²⁴ SOUTH CAROLINA ORDINANCE OF NULLIFICATION (1832), https://avalon.law.yale.edu/19th_century/ordnull.asp.

²⁵ RICHARD E. ELLIS, THE UNION AT RISK: JACKSONIAN DEMOCRACY, STATES' RIGHTS AND THE NULLIFICATION CRISIS 28–32 (1987).

²⁶ VIRGINIA RESOLUTION—ALIEN AND SEDITION ACTS (1798), https://avalon.law.yale.edu/18th_century/virres.asp.

²⁷ KENTUCKY RESOLUTION—ALIEN AND SEDITION ACTS (1799), https://avalon.law.yale.edu/18th_century/kenres.asp.

²⁸ ELLIS, *supra* note 25, at 32.

²⁹ 60 U.S. (19 How.) 393 (1857).

Court, . . . the people will have ceased to be their own rulers, having . . . resigned their Government into the hands of that eminent tribunal.”³⁰

The question of the true locus of sovereignty may have resolved itself as early as 1819, had Marshall’s blunt declaration that sovereignty lies with the people been respected as the supreme law of the land.³¹ But, as Stampf explains, “the language of state sovereignty had become deeply embedded in the American vocabulary. Almost everyone spoke of the Union as ‘our confederacy,’ of the Constitution as a ‘compact.’”³² A Court of arguably self-created power whose authority was challenged by states, presidents, and popular political thinkers could not compete with the court of popular opinion. And because, post-ratification, the Court emerged as the most obvious arbiter of the constitution, the onslaught of challenges to its legitimacy meant that there was ultimately no one with the legal and popular power to answer the question of where sovereignty lay. As a result, the controversy would continue to rage until it erupted into the Civil War.

³⁰ Abraham Lincoln, First Inaugural Address (Mar. 4, 1861).

³¹ *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 404–05 (1819).

³² Stampf, *supra* note 5, at 28.

Applicant Details

First Name **Hannah**
 Last Name **Klaus**
 Citizenship Status **U. S. Citizen**
 Email Address hannaheklaus@gmail.com
 Address

Address
Street
244 South Castle Street
City
Baltimore
State/Territory
Maryland
Zip
21231
Country
United States

Contact Phone Number **9195925447**

Applicant Education

BA/BS From **American University**
 Date of BA/BS **May 2019**
 JD/LLB From **University of Maryland Francis King Carey School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=52102&yr=2011
 Date of JD/LLB **May 16, 2024**
 Class Rank **30%**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Millemann, Michael
mmillem@law.umaryland.edu

Percival, Robert
rpercival@umaryland.edu
(410) 706-8030

Logan, Marie
mlogan@earthjustice.org

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Hannah Klaus

244 S. Castle Street Baltimore, MD 21231
hklaus@umaryland.edu (919) 592-5447

June 12, 2023

Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Honorable Jamar K. Walker:

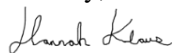
I am a rising third-year law student at the University of Maryland Francis King Carey School of Law School. I am writing to apply for a 2024-2045 judicial clerkship in your chambers. I am interested in a one-year term clerkship. This clerkship would be an incredible opportunity to serve the community of Virginia and prepare for a career in public interest litigation in the Southeast region. I am taking a course on federal courts this fall.

I have demonstrated stellar research, writing, analytical skills, and attention to detail throughout my professional and law school careers. I will offer these skills and an outstanding work ethic as a judicial clerk. Prior to law school, I flexed my research, writing, and persuasive communication skills as the Distributed Organizing Associate at Greenpeace. In that role, I led volunteers in getting out the vote for environmental candidates by researching state voting laws and writing concise and persuasive textbanking campaign scripts that reached over 2 million voters. In my law school experience, I further refined my skills through several legal research and writing courses in which I produced legal memoranda, appellate briefs, and seminar papers. For example, I wrote a thorough legal analysis on the public participation requirements of the Clean Water Act for a seminar course last semester.

I continue to refine my legal research and writing skills through legal internship experiences. This spring semester, as a legal extern with the Earthjustice California Regional Office, I supported attorneys in preparing for several active litigation matters by researching and writing legal memoranda on complex civil and environmental issues. In one assignment, I prepared a memorandum in which I advised attorneys on which parties must be named as real parties in interest. Last summer, as the legal intern for the Center for Progressive Reform, I supported advocacy for low-income utility ratepayers in North Carolina by researching the dockets of the North Carolina Utilities Commission and summarizing my findings to report back to my supervisor. This summer, I am interning for the Southern Environmental Law Center where I am applying my legal research and writing skills and immersing myself in case and project management. I am confident that my practical legal experience and education will allow me to skillfully and efficiently research, draft, and proofread opinions and provide support in preparation for oral arguments while applying expert attention to detail.

I am eager to serve as a Judicial Clerk in your chambers. I would appreciate the opportunity to meet with you to discuss my interest and qualifications for this position. Thank you for your time and consideration.

Sincerely,



Hannah Klaus

Hannah E. Klaus

244 S. Castle St. Baltimore, MD 21231 • hklaus@umaryland.edu • (919) 592-5447

EDUCATION

University of Maryland Francis King Carey School of Law, Baltimore, MD

Juris Doctor Candidate, May 2024

GPA: 3.60

Activities: National Lawyers Guild Maryland Carey Law Student Chapter: Co-President (2023-current); Legal Observer Coordinator (2022-2023); 1L Student Representative (2021-2022); University of Maryland Legislative Law Association: Treasurer (2022-2023); Maryland Environmental Law Society: Community Outreach Coordinator (2023-current); Barbri Student Representative

American University, Washington, DC

Bachelor of Arts in Environmental Studies and Economics (International Track) and Minor in Spanish, May 2019

Study Abroad: Universidad Nacional de Costa Rica (February- June 2018)

Work Study: American University Student Center, *Operations Assistant* (August 2016- July 2019)

Activities: College of Arts and Sciences Communications and Marketing, *Student Writer* (August 2015- May 2016)
Fossil Free American University, *Student Organizer*

EXPERIENCE

Southern Environmental Law Center, Chapel Hill, NC

Law Clerk, May 2023- Current

- Support attorneys with environmental advocacy and preparation for active litigation matters by conducting research and writing legal memoranda on complex civil and environmental issues

Earthjustice California Regional Office, Remote position

Legal Extern, January 2023- April 2023

- Supported attorneys with preparation for active litigation matters by conducting research and writing legal memoranda on complex civil and environmental issues
- Participated in committee and staff meetings; moots of oral arguments; and interviews of expert witnesses

Center for Progressive Reform, Washington, DC

Legal Intern, May 2022- August 2022

- Researched North Carolina Utilities Commission dockets and wrote a [blog post](#) advocating for low-wealth ratepayers
- Revised the Maryland Climate Equity Act to prepare it to be reintroduced in the 2023 legislation session

Greenpeace USA, Washington, DC

Distributed Organizing Associate, January 2020- July 2021

Supporter Mobilization Assistant Fellow, July 2019- January 2020

- Led volunteer team in contacting over 2 million voters in the 2020 general election
- Researched state voting laws and wrote persuasive textbanking scripts to get out the vote for climate leaders
- Coached a team of 12 volunteer leaders, managed online volunteer platform, and hosted monthly volunteer calls

The Climate Reality Project, Washington, DC

Engagement Chapter Support Team Intern, January 2019- April 2019

- Researched and created a report of the social justice outcomes of carbon pricing for 10 states
- Grew the national Climate Reality Chapters program by providing direct support to local climate action groups

CleanAIRE Carolina, Raleigh, NC

Air Quality Health Specialist Intern, June 2018- August 2018

- Created educational materials on air quality and patient health for physicians
- Contributed to 13 ArcGIS StoryMap North Carolina county air quality reports

Environmental Protection Agency, National Center for Environmental Research, Washington, DC

Communications Intern, September 2017- December 2017

- Wrote and edited press kits, including press releases and social media posts on EPA funded research

LANGUAGE SKILLS & ADDITIONAL EXPERIENCE

Spanish, Intermediate Conversational, Reading, and Writing Skills

Sunrise Movement, *Volunteer* (Washington, DC and Baltimore, MD), November 2018- Present

Youth Empowered Solutions, *Youth Staff* (Raleigh, NC), July 2012- December 2017

The Climate Institute, *Blog and Social Media Manager* (Washington DC), August 2016- December 2016

PUBLICATIONS AND RESEARCH

Klaus, H. (2015) Youth Empowerment to Achieve Patient Engagement. *North Carolina Medical Journal* vol. 76 no. 3 187 188

Hannah Klaus
Patricia A. Scott
University Registrar
University of Maryland, Baltimore

Student No: @00306529 Date Issued: 05-JUN-2023
Record of: Hannah E Klaus Page: 1
Current Name: Hannah E. Klaus
Issued To: HANNAH KLAUS
HANNAHEKLAUS@GMAIL.COM
Parchment DocumentID: TWBZQJAO

Course Level: School of Law

Current Program	SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Major : Law				
Maj/Concentration : Law Cardin Required				
SUBJ NO.	COURSE TITLE	CRED GRD	PTS R	
INSTITUTION CREDIT:				
Fall 2021				
LAW 527A	CIVIL PROCEDURE	4.00 B+	13.32	
LAW 530A	CONTRACTS	4.00 A	16.00	
LAW 535A	TORTS	4.00 A	16.00	
LAW 550A	INTRODUCTION TO LEGAL RESEARCH	1.00 B+	3.33	
LAW 564A	LAWYERING I	3.00 B	9.00	
Ehrs: 16.00 GPA-Hrs: 16.00 Qpts:		57.65	GPA: 3.60	
Spring 2022				
LAW 506A	CRIMINAL LAW	3.00 B	9.00	
LAW 515U	LAW AND SOCIAL CHANGE	3.00 A-	11.01	
LAW 528A	CON LAW I: GOVERNANCE	3.00 A-	11.01	
LAW 534A	PROPERTY	4.00 B+	13.32	
LAW 565A	LAWYERING II	3.00 A-	11.01	
Ehrs: 16.00 GPA-Hrs: 16.00 Qpts:		55.35	GPA: 3.46	
Fall 2022				
LAW 501F	ADMINISTRATIVE LAW	3.00 A+	12.99	
LAW 529A	CON LAW II: INDIVIDUAL RIGHTS	3.00 B+	9.99	
LAW 556B	ENVIRONMENTAL LAW	3.00 A	12.00	
LAW 572C	BUSINESS ASSOCIATIONS	3.00 A-	11.01	
LAW 581G	ELS: CLEAN WATER ACT	3.00 B+	9.99	
Ehrs: 15.00 GPA-Hrs: 15.00 Qpts:		55.98	GPA: 3.73	
Spring 2023				
LAW 535S	ENVIRON LAW EXTERNSHIP WKSP	1.00 CR	0.00	
LAW 540U	ALR: ENVIRONMENTAL LAW (DIS)	1.00 A-	3.67	
LAW 578F	EVIDENCE	3.00 B+	9.99	

***** CONTINUED ON NEXT COLUMN *****

Institution Information continued:
LAW 580B FAMILY LAW 3.00 A- 11.01
Ehrs: 8.00 GPA-Hrs: 7.00 Qpts: 24.67 GPA: 3.52

IN PROGRESS WORK
LAW 579B EXTERNSHIPS 4.00 IN PROGRESS
In Progress Credits 4.00

***** TRANSCRIPT TOTALS *****
Earned Hrs GPA Hrs Points GPA
TOTAL INSTITUTION 55.00 54.00 193.65 3.59
TOTAL TRANSFER 0.00 0.00 0.00 0.00
OVERALL 55.00 54.00 193.65 3.59
***** END OF TRANSCRIPT *****

LAST	FIRST	M	AU ID	BIRTH
LAUS	HANNAH	E	4150894	05/21

DATE PRINTED	PAGE
06/05/23	1 OF 1



AMERICAN UNIVERSITY

ACADEMIC RECORD WASHINGTON, D C

Course Number	Course Title	Oth	Crs Val	Grd	Quality Points	Course Number	Course Title	Oth	Crs Val	Grd	Quality Points
---------------	--------------	-----	---------	-----	----------------	---------------	--------------	-----	---------	-----	----------------

ADVANCED PLACEMENT CREDITS ACCEPTED 18.00 HOURS

ALL 2015					
MM-105	VISUAL LITERACY 1:1		03.00	A-	11.01
CON-100	MACROECONOMICS 4:4		03.00	A-	11.01
ISU-140	CROSS-CULTURAL COMMUNICATION 3:3		03.00	A	12.00
PAT-202	BASIC STATISTICS		04.00	A	16.00
RTG-100	COLLEGE WRITING		03.00	A	12.00
	DEAN'S LIST				
	AU SEM SUM: 16.00HRS ATT 16.00HRS ERND 62.02QP 3.87GPA				

SPRING 2016					
CON-200	MICROECONOMICS		03.00	B-	08.01
NVS-260	INTRO TO ENVIRONMENTAL SCI II		04.00	A-	14.68
MTH-170	PRECALCULUS MATHEMATICS		03.00	A	12.00
ISU-105	WORLD POLITICS 3:3		03.00	A-	11.01
COL-200	UNIVERSITY COLLEGE RESEARCH LAB				
	REDUCING HEALTH DISPARITIES		01.00	A	04.00
RTG-101	COLLEGE WRITING SEMINAR		03.00	A-	11.01
	AU SEM SUM: 17.00HRS ATT 17.00HRS ERND 60.71QP 3.57GPA				

FALL 2016					
IO-100	GREAT EXPERIMENTS IN BIO		04.00	B+	13.32
CON-301	INTERMEDIATE MACROECONOMICS		03.00	B+	09.99
NVS-160	INTRO TO ENVIRONMENTAL SCI I		04.00	B+	13.32
NVS-491	INTERNSHIP IN ENVIRON STUDIES		02.00	A	08.00
PAN-252	SPANISH, INTERMEDIATE I		04.00	A-	14.68
	AU SEM SUM: 17.00HRS ATT 17.00HRS ERND 59.31QP 3.48GPA				

SPRING 2017					
HEM-100	THE MOLECULAR WORLD		04.00	B+	13.32
CON-300	INTERMEDIATE MICROECONOMICS		03.00	C	06.00
NVS-396	SELECTED TOPICS:NON-RECURRING				
	MARINE ECOLOGY & CONSERVATION		03.00	A-	11.01
ISU-250	ENV SUSTAINBLTY/GLOBAL HEALTH		03.00	A-	11.01
PAN-253	SPANISH, INTERMEDIATE II		04.00	B-	10.68
	AU SEM SUM: 17.00HRS ATT 17.00HRS ERND 52.02QP 3.06GPA				

FALL 2017					
SC-310	INTRO TO GEOGRAPHIC INFO SYSTS		03.00	B-	08.01
CON-361	ECONOMIC DEVELOPMENT		03.00	B-	08.01
CON-372	INTERNATIONAL ECON: FINANCE		03.00	C+	06.99
NVS-491	INTERNSHIP IN ENVIRON STUDIES		01.00	A	04.00
CVT-210	POL POWER & AM PUB POLICY		03.00	A	12.00
PAN-352	ADV SPANISH I: SPAIN		03.00	B+	09.99
	AU SEM SUM: 16.00HRS ATT 16.00HRS ERND 49.00QP 3.06GPA				

SPRING 2018

	AU ABROAD CREDITS ACCEPTED 16.00 HOURS FROM				
	UNIVERIDAD NACIONAL DE COSTA RICA				
ENVS-3XX	ECOLOGY & SUSTAINABLE DEV		03.00	A-	11.01
ENVS-3XX	ENVIRONMENTAL ETHICS		03.00	B	09.00
ENVS-3XX	ENVI. POLITICS & LEG.		03.00	B	09.00
SISA-354	ENVIRONMENTAL ECONOMICS		03.00	B+	09.99
SPAN-3XX	ADV. SPANISH LANG.		04.00	A	16.00
	AU SEM SUM: 16.00HRS ATT 16.00HRS ERND 55.00QP 3.43GP				

FALL 2018

ECON-319	U.S. ECONOMIC HISTORY		03.00	A-	11.01
ECON-320	HISTORY OF ECONOMIC IDEAS		03.00	A	12.00
HFIT-230	CROSS TRAINING		02.00	A	08.00
IBUS-300	FUNDAMENTALS OF INT'L BUSINESS		03.00	A	12.00
SISU-349	TOPICS GLB INEQ,DEV,ENV,HLTH				
	CLIMATE RESILIENT CITIES		03.00	A	12.00
	AU SEM SUM: 14.00HRS ATT 14.00HRS ERND 55.01QP 3.92GP				

SPRING 2019

ECON-371	INTERNATIONAL ECONOMICS: TRADE		03.00	B	09.00
ENVS-496	SELECTED TOPICS:NON-RECURRING				
	EXPLORING THE ARCTIC		03.00	A-	11.01
	AU SEM SUM: 6.00HRS ATT 6.00HRS ERND 20.01QP 3.33GPA				
	DEGREE AWARDED:				
	BACHELOR OF ARTS				
	DEGREE DATE:				
	05/12/19				
	MAJOR:				
	ENVIRONMENTAL STUDIES				
	MAJOR:				
	ECONOMICS				
	GRADUATING GPA:				
	3.47				
	MAJOR (ENVIRONMENTAL STUDIES) GPA:				
	3.49				
	MAJOR (ECONOMICS) GPA:				
	3.18				

END OF TRANSCRIPT

UNIVERSITY REGISTRAR

The American University ♦ Office of the University Registrar ♦ 4400 Massachusetts Ave NW ♦ Washington DC 20016 ♦ (202) 885-2022

For detailed information about transcripts prior to Fall 1978, GPA, Course Numbering, Minimum Degree Requirements, and other transcript related topics, please visit www.american.edu/provost/registrar.

Official transcripts must carry the date of issue, the signature of the University Registrar, and the seal of the University.

Accreditation: American University is accredited by the Middle States Association of Colleges and Schools, Commission on Higher Education, 3624 Market Street, Philadelphia, PA 19104.

Course Value: American University uses the Carnegie Classification definition of a credit hour: at least 12.5 hours of direct faculty instruction per semester (in class, online, remote site) with at least 25 hours of student work outside of that direct instruction, typically conducted over a 15-week semester, or an equivalent amount of faculty instruction and work over a different time period.

Grade Point Average (GPA): There is no official percentile equivalent for grades at American University. The GPA listed at the end of each semester is for that semester only. The GPA includes A through F and FX grades and excludes courses affected by the Freshman Forgiveness Rule (see website). The graduate cumulative GPA includes only graduate-level courses. American University does not rank its students.

Grading System Effective Fall 2012:

Grade		Quality Points (QP)	In GPA
A	Excellent	4.00	yes
A-		3.67	yes
B+		3.33	yes
B	Good	3.00	yes
B-		2.67	yes
C+		2.33	yes
C	Satisfactory	2.00	yes
C-		1.67	yes
D	Poor	1.00	yes
F	Academic Fail	0.00	yes
FX	Administrative Fail in Course for Grade	0.00	yes
I	Incomplete	0.00	no
IP	Course in progress	0.00	no
L	Audit (no credit)	0.00	no
--	No grade submitted	0.00	no
P	Pass (Performance no less than C for undergraduates or B for graduate students)	0.00	no
SP	Satisfactory Progress (graduate only)	0.00	no
UP	Unsatisfactory Progress (graduate only)	0.00	no
ZL	Administrative withdrawal from audit	0.00	no
W	Withdrawal (after the final date for adding a course)	0.00	no
ZX	Administrative Fail in Pass/Fail Course	0.00	no
FZ	Academic Fail in Pass/Fail Course	0.00	no

Academic Fail: Academic fail indicates the student's continued enrollment in the course and that he or she did not satisfy the instructor's summative requirements for passing the course.

Administrative Fail: Administrative fail is assigned by the instructor in lieu of a grade of F when a student never attended or ceased attending the class, rendering an assessment of academic performance impossible.

Incomplete: Effective Fall 2017, an incomplete is assigned by the instructor in combination with a default grade to be awarded if specific requirements are not completed by the incomplete due date.

Transcript Notations:

Repeat Courses: A symbol of **R** follows the grade entry.

Comprehensive Examinations: SAT = Satisfactory; DIS = Distinction

General Education Codes: To the right of the course title (see website)

Other Codes: C = Community Based Learning; H = Honors

Grading System Fall 1978 to Summer 2012:

Grade		Quality Points (QP)	In GPA
A	Excellent	4.0	yes
A-		3.7	yes
B+		3.3	yes
B	Good	3.0	yes
B-		2.7	yes
C+		2.3	yes
C	Satisfactory	2.0	yes
C-		1.7	yes
D	Poor	1.0	yes
F	Fail	0.00	yes
X	Fail: Administrative penalty	0.00	yes
I	Incomplete	0.00	no
IP	In progress	0.00	no
L	Audit	0.00	no
--	No grade reported	0.00	no
P	Pass (Performance no less than C for undergraduates or B for graduate students)	0.00	no
W	Withdrawal (after the final date for adding a course)	0.00	no
ZF	Fail: Pass/Fail registration	0.00	no
ZL	Administrative withdrawal from audit	0.00	no
ZX	Fail: Administrative penalty on Pass/Fail registration	0.00	no

FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)

(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees will not permit any other party access to this record without consent of the student. Alteration of this transcript may be a criminal offense.

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to enthusiastically recommend Hannah Klaus for a clerkship position. I think she would be an excellent clerk. I met Hannah in January 2022 while co-teaching a course called Law and Social Change in which she was enrolled.

Hannah has excellent analytical, research, and writing skills. As a major part of the first-year course, students identified a major problem in Baltimore and Maryland, did comprehensive legal and factual research about it, developed and justified a reform plan, and described how they would implement the plan.

Hannah and two other students, working in a team, took on homelessness and the need for affordable housing as their interrelated projects. Their project was excellent—one of the best in the class. In this project, Hannah demonstrated many of the skills a good clerk needs, e.g., the abilities to identify an issue, to do in-depth research to address it, to synthesize law and facts, and to write in a very clear and persuasive way. Her research, writing, and analysis all were terrific!

From this project, and her interactions with her teammates, it is apparent both that Hannah works well in teams and is a team leader. She is a modest leader who supports teammates and quietly leads. She helped to organize the team, apportion tasks, and plan meetings with me and my co-teacher. She earned an A- grade in the course, in large part because of her excellent work on this project.

One of the striking things about Hannah's background is the wide variety of research and writing projects in which she has engaged. These have been in her extensive and impressive experiences prior to law school, in law school, and in summer positions while in law school. She has researched and written major reports, policy papers, educational materials, and legal memoranda and briefs.

Hannah's research and writing has been in the environmental field, as her resume indicates, often about complex issues that involve law, policy, and science. The research, analytical, and writing skills she has developed in this context, as well as her ability to work well with others, will serve her well in a judicial clerkship.

Hannah also has been an important student leader at the law school in several different organizations, including as Treasurer of the University of Maryland Association of Legislative Law, a nonpartisan organization focused on policy, politics, and legislation, and the roles they play in our legal system.

In sum, Hannah is an outstanding law student. She has all the skills and personal attributes of a superb judicial clerk!

Very truly yours,
Michael Millemann
Jacob A France Professor of Law
University of Maryland-Carey School of Law
500 W. Baltimore St.
Baltimore, MD. 21201
410-294-0954

Michael Millemann - mmillem@law.umaryland.edu

Dear Judge

I am pleased to recommend Hannah Klaus for a clerkship with you.

Hannah was a student in my Environmental Law class during the fall semester 2022. This class involves very complex regulatory materials that students usually find quite challenging. Hannah had no difficulty mastering these materials and was one of the most effective members of the class.

Through her postings on the class website's Discussion Board it became apparent that Hannah has a keen appreciation not only for black letter law, but also for the various economic and political forces that shape how law is implemented and enforced. This was reflected in the short paper Hannah wrote on "The Intersection of the Labor and Environmental Justice Movements in the United States." In this paper she examined efforts by industry groups to drive a wedge between environmentalists and working people as well as the common ground these interests share in benefiting from regulatory statutes.

I was not surprised when Hannah wrote a terrific final exam that earned her one of the 9 grades of "A" that I awarded in a class of 39 students.

Hannah has been relentless at obtaining experience through a variety of internships and summer employment that may account for her sophisticated understanding of the impact of law on policy. She also has excellent research and writing skills that will help make her a terrific law clerk. I recommend her with the highest enthusiasm.

Sincerely,

Robert V. Percival
Robert F. Stanton Professor of Law
Director, Environmental Law Program

Robert Percival - rpercival@umaryland.edu - (410) 706-8030

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to submit this letter of recommendation for Hannah Klaus, whom I had the pleasure of supervising during the Spring 2023 semester in her position as a law clerk with the California Regional Office of Earthjustice. I believe that Hannah is an excellent candidate for a judicial clerkship, and wholeheartedly endorse her for a position with your chambers.

Earthjustice is a non-profit law organization that specializes in environmental law and administrative advocacy in pursuit of a healthy environment. We work to protect natural resources, combat climate change, and defend the rights of communities and wildlife that experience environmental harm. The California Regional Office of Earthjustice focuses on confronting environmental justice issues, including advocating for communities affected by air pollution and farmworker communities exposed to pesticides. Our office also specializes in the protection of endangered species and the preservation of public lands.

Hannah was a thoughtful and diligent law student during her time working with me this past spring. She consistently demonstrated a deep understanding of environmental issues, and an eagerness to explore thorny legal questions. During her time with us, she explored complex civil procedural issues for our office, including the requirements for notice under the federal Endangered Species Act, and the requisite parties to be named in a future lawsuit involving pesticide compliance. Her analytical skills allowed her to home in on the core issues presented, and she asked thoughtful questions to ensure her research would be useful to the attorneys supervising each assignment.

Moreover, I was impressed with Hannah's commitment to ethical conduct. She consistently approached her work with the utmost integrity and was always careful to ensure that her research and analysis were impartial and objective. She was attentive to the need for confidentiality in matters that we are preparing to litigate.

As a former judicial clerk myself, I understand the importance of the role that a clerk plays in assisting a judge in conducting legal research and drafting opinions. Based on my experience working with Hannah, I believe that she possesses the intellectual curiosity, analytical diligence, and commitment to ethical conduct that are essential for success in this role.

In summary, I wholeheartedly endorse Hannah for a judicial clerkship. She is a talented and dedicated individual who would make a valuable contribution to any judge's chambers. If you require any further information, please do not hesitate to contact me.

Sincerely,

Marie Elizabeth Logan, Esq.

Senior Associate Attorney

Earthjustice, California Regional Office

mlogan@earthjustice.org

415-217-2000

Marie Logan - mlogan@earthjustice.org

Hannah Klaus

244 S. Castle Street Baltimore, MD 21231

hklaus@umaryland.edu (919)592-5447

Writing Sample I

The following is a memorandum I prepared for attorneys during my spring 2023 externship with the Earthjustice California Regional Office. In this memo, I informed attorneys about the law governing the naming of real parties in interest in a petition for writ of mandamus brought under the California Food and Agricultural Code and the California Environmental Quality Act. The recipients of this memo and the summary of facts have been redacted for confidentiality.

MEMORANDUM

TO: [Redacted for confidentiality]
 FROM: Hannah Klaus, Legal Extern
 DATE: April 6, 2023
 RE: Real Parties in Interest in Petition for Writ of Mandamus

I. Issues

- a. When do civil litigants need to name real parties in interest in a petition for writ of mandamus?
- b. In a petition for writ of mandamus under the Food and Agricultural Code and the California Environmental Quality Act (CEQA), who qualifies as a real party in interest?

II. Brief Answers

- a. The California Code of Civil Procedure requires every action to be “prosecuted in the name of the real party in interest, except as otherwise provided by statute.” Cal. Civ. Pro. Code § 367. Civil litigants must name any real parties in interest in a petition for writ of mandamus. *Sonoma Cnty. Nuclear Free Zone ’86 v. Superior Court*, 234 Cal. Rptr. 357, 361 (1987) (citing Cal. Civ. Pro. Code § 1088. The Supreme Court of California has defined a real party in interest as “any person or entity whose interest will be directly affected by the proceeding,” including anyone “with a direct interest in the result.” *Zolly v. City of Oakland* 514 P.3d 799, 805 (2022) (quoting *Connerly v. State. Pers. Bd.*, 129 P.3d 1, 6 (2006)).
- b. California case law strongly suggests a party is not a real party in interest in a petition for writ of mandamus solely because they are named on a permit. A party is a real party in interest that should be named on a petition for writ of mandamus challenging a permit **if they have a sole or shared property and/or business interest to be benefited by the permit.**

III. [The factual background section has been redacted for confidentiality.]

IV. Analysis

a. Real Parties in Interest in California Civil Litigation

The generally accepted definition of a real party in interest is “a person entitled under substantive law to enforce the right sued on and who generally, but not necessarily, benefits from the action’s financial outcome.” *Real Party In Interest*, BLACK’S LAW DICTIONARY (11th ed. 2019). The California Code of Civil Procedure requires every action to be “prosecuted in the name of the real party in interest, except as otherwise provided by statute.” Cal. Civ. Pro. Code § 367. Civil litigants must name any real parties in interest in a petition for writ of mandamus. *Sonoma Cnty. Nuclear Free Zone ’86 v. Superior Court*, 234 Cal. Rptr. 357, 361 (1987) (citing Cal. Civ. Pro. Code § 1088. The California Rules of Court require that “if the petition names as respondent a judge, court, board, or other officer acting in a public capacity, it must disclose the name of any real party in interest.” Cal. Rules of Court, rule 8.486(a)(2).¹

Similar to the Black’s Dictionary definition of the term, the Supreme Court of California has defined a real party in interest as “‘any person or entity whose interest will be directly affected by the proceeding,’ including anyone ‘with a direct interest in the result.’” *Zolly v. City of Oakland* 514 P.3d 799, 805 (2022) (quoting *Connerly v. State Pers. Bd.*, 129 P.3d 1, 6 (2006)).

In *Sonoma County Nuclear Free Zone ’86 v. Superior Court*, the California Court of Appeal for the Fifth Appellate District further defined the contours of a real party in interest in civil litigation. 234 Cal. Rptr. 357 (1987). The court stated that a real party in interest “has generally been defined as ‘any person or entity whose interest will be directly affect by the proceeding.’” *Id.* at 361 (quoting Cal. Civil Writs (Cont. Ed. Bar 1970) § 10.18, p. 194). However, the court explained that “while the real party in interest is ‘usually the other party to the lawsuit . . .,’” it can also be (1) “‘the person or entity in whose favor the act complained of operates [sic],” (2) “‘anyone having a direct interest in the result’” *Id.* (quoting Cal. Civil Writs (Cont. Ed. Bar 1970) § 10.18, p. 194), or (3) “‘the real adverse party...in whose favor the act complained of has been done.’” *Id.* (quoting *De Lucca v. Price*, 146 Cal. 110, 113 (1905)). In this case, an opponent group to a ballot initiative filed a motion for a peremptory writ of mandate to require the local elections board clerk to accept its late ballot argument. *Id.* at 360. The petition did not

¹ This rule is under Title 8 of the California Rules of Court which covers appellate rules. The applicability of this rule may depend on whether the appeal to [court name redacted] is covered by this Title even though the court is not technically an appellate court.

name the proponent group of the ballot initiative as a real party in interest. *Id.* The court denied the peremptory writ because the proponent group was a real party in interest and the superior court had “no authority to issue a peremptory writ without notice to the real party in interest.” *Id.* at 361-63, 365.

The concept of a real party in interest in civil litigation was further fleshed out by the California Court of Appeal for the Sixth Appellate District in *Jasmine Networks, Inc. v. Superior Court*. 103 Cal. Rptr. 3d 426 (2009). The court explained that while the application of Section 367 of the California Code of Civil Procedure is “superficially concerned with procedural rules, [it] really calls for a consideration of rights and obligations.” *Id.* at 433 (quoting 4 Witkin, Cal. Proc. 6th Plead § 121 (2022)). The court provided an analytical process for determining whether a real party in interest is a necessary party that *should* be joined in civil litigation. *Id.* at 437. In explaining the “strong preference for bringing all genuinely interested parties into a single proceeding and adjudicating all of the affected rights and liabilities at once,” the court expressed doubt that concerns about “potentially duplicative or inconsistent obligations should have *any bearing whatever* on a plaintiff’s status as ‘real party in interest’ under section 367.” *Id.* To ascertain whether a real party in interest is a necessary party, the court asks “(1) [s]hould that person be joined in the action? (2) [i]f so, *can* he be joined in the action? and (3) [i]f he cannot be joined, does his absence require dismissal in light of the factors referred to above.” *Id.* The court explained that only when the third question receives an affirmative answer, or where a party is indispensable, would the absence of another possible claimant “deprive the plaintiff of the right to prosecute his cause of action.” *Id.*

b. Parties in Challenges to Permitting Decisions that are Real Parties in Interest and Necessary Parties

Although California case law has not explicitly addressed which parties in an action challenging a permit are real parties in interest, permit challenge cases in which a real party or parties in interest are named are illustrative. In many permit challenges, the respondent is a commission, board, agency, or other decision-making body that approved and issued the permit. See *Voices of the Wetlands v. State Water Res. Control Bd.*, 257 P.3d 81, 86-91 (2011) (State Resources Control Board is respondent in the action that issued the permit at issue); *Friends of Mammoth v. Bd. Of Supervisors*, 502 P.2d 1049, 1051-53 (1972) (en banc) (Board of Supervisors is respondent in the action that issued the permit at issue).

Generally, the real party or parties in interest named in a permit challenge are parties that applied for the permit and either were issued or denied the permit. Additionally, property interests tend to make an operator or agent a real party in interest. Such property interests may include sole or shared title to the property to be benefited by the permit in a personal or business capacity, or a residence on the property to be benefited by the permit. For example, in *Friends of Juana Briones House v. City of Palo Alto*, there was an appeal from a judgment that granted a writ of mandate. 118 Cal. Rptr. 3d 324, 327 (2001). The writ of mandate would set aside the approval of a permit to demolish a historic home and direct the City of Palo Alto to comply with CEQA before considering reissuance of the permit. *Id.* The real parties in interest to the action were individuals who applied for and were issued the permit, and who shared title to the property to be benefited by the permit. *Id.* at 327-31.

In several additional decisions, the California Courts of Appeal have similarly found property owners to a property to be benefited by a permit are real parties in interest. *See also State of California v. Superior Court*, 524 P. 2d 1281, 1284-86 (1974) (en banc) (Real parties in interest to an action challenging a permit to develop land within a coastal zone are two corporations and a partnership that collectively applied for the permit and have a property interest benefited by the permit); *McAllister v. County of Monterey*, 54 Cal. Rptr. 3d 116, 120-22 (2007) (Real parties in interest in an action challenging a permit to construct a single-family dwelling on the Big Sur Coast share title to the property to be benefited by the permit and applied for the permit together); *Sierra Club v. County of Sonoma*, 217 Cal. Rptr. 3d 327, 330-32 (2017) (Real parties in interest to a petition for writ of mandate challenging an erosion-control permit under CEQA were issued this permit and owned the land to be benefited by the permit for a business purpose); *Keep our Mountains Quiet v. County of Santa Clara*, 187 Cal. Rptr. 3d 96, 101-03 (2015) (Real party in interest in a petition for writ of mandate challenging a use permit was the party that was issued the permit and had a residence on the property to be benefited by the permit).

Case law varies as to whether parties with a business interest *and* were the permit applicants, issued the permit, and/or had a property interest in the property to be benefited by the permit are real parties in interest. In *Voices of the Wetlands*, Duke Energy Moss Landing, LCC, and its parent company, Duke Energy North America, LLC, both owned the Moss Landing Power Plant at the time that a National Pollution Discharge Elimination System Permit was issued. 257 P.3d at 107 n.l. Both parties were real parties in interest to a review of a denial of a petition for writ of mandate challenging the permit. *Id.* In *Communities for a Better Environment v. Bay Area Air Quality Management District*, both Kinder Morgan Energy Partners and its subsidiary,

Kinder Morgan Materials Services, were real parties in interest to a challenge to a permit to operate. 205 Cal. Rptr. 3d 12, 14-16 (2016). Kinder Morgan Materials Services was the operator of the facility benefited by the permit and the party to which the permit was issued. *Id.* However, it is not clear whether Kinder Morgan Energy Partners, the parent company and a real party in interest, had a property interest in the facility or was named on the permit. *Id.*

If an operator or agent has a property or business interest to be benefited by the permit *and* applied for the permit on behalf of the entity, it is more likely that the operator or agent is a real party in interest. However, this is not dispositive. In *Save the Agoura Cornell Knoll v. City of Agoura Hill*, the real parties in interest to an appeal to the issuance of the writ of mandate challenging permits were a limited partnership and its limited partner. 259 Cal. Rptr. 3d 707, 718-19 (2020). The Court of Appeals for the Fourth District of California found the limited partner to be a real party in interest for two primary reasons: (1) the limited partner was “listed as the sole applicant in the City’s Notice of Determination for its approval of the project and adoption of the [mitigated negative declaration.]” *Id.* at 752. The court explained that CEQA Section 21167.6.5 requires a “petitioner in a CEQA action to name, as a real party in interest, any person who is identified as the applicant in the notice of determination.” *Id.* (2) There was substantial evidence that the limited partner “had a direct interest in the project that gave rise to the litigation.” The evidence suggested that the limited partner was the owner of the property to be benefited by the permit. *Id.* at 753.

V. Conclusion

California case law strongly suggests a party is not a real party in interest in a petition for writ of mandamus solely because they are *named* on a permit. A party is a real party in interest that should be named on a petition for writ of mandamus challenging a permit if they have a sole or shared property and/or business interest to be benefited by the permit. Generally, permit applicants must have either preceding interest in addition to their “interest” as an applicant to be considered a real party in interest.

Hannah Klaus

244 S. Castle Street Baltimore, MD 21231

hklaus@umaryland.edu (919)592-5447

Writing Sample II

The following writing sample is an appellate brief I wrote for my Spring 2022 Lawyering II course. While the original brief had two issues, this sample will include only the issue of whether law enforcement officers intruded in a space in which the Defendant, Davina Day, had a reasonable expectation of privacy, and therefore conducted a privacy-based Fourth Amendment search. The cover page, table of contents, table of authorities, and the statement of the case have been removed, and only one issue presented and section of the argument has been included for brevity.

STATEMENT OF JURISDICTION

Appellant, Davina Day (“Day”), entered a conditional plea to a grand-jury indictment charging her with violation of the Federal Lacey Act, 16 U.S.C. § 3372(a)(1), and with conspiracy to violate the Lacey Act, 18 U.S.C. § 371 for possessing species protected by the Act. J.A. 1-4. Day filed a motion to suppress the evidence found in her apartment, and on February 1, 2022, the district court denied that motion. Day filed a timely notice of appeal on March 3, 2022. J.A. 45.

The district court had subject matter jurisdiction pursuant to 18 U.S.C. § 3231. This Court has jurisdiction pursuant to 28 U.S.C. § 1291 to review the final order of the district court.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Did the district court err as a matter of law in holding that the officers did not conduct a privacy-based search under the Fourth Amendment when they entered Day’s apartment building without using a key or the intercom system and stood in the secluded alcove in front of her apartment to test a key fob on her door?

SUMMARY OF THE ARGUMENT

The Fourth Amendment provides “the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. The district court erred in holding that law enforcement did

not conduct a property or privacy-based Fourth Amendment search and in denying Day's motion to suppress.

Day had a reasonable expectation of privacy in the area around the sensor pad on her door, the area in front of her apartment, and the common areas of her apartment building because these areas were areas of limited access and Day took steps to maintain her privacy. In addition, the officers physically intruded upon Day's apartment by using the key fob, which is a super-sensory device, on Day's door.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews the district court's grant of summary judgment *de novo*. *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998). Under a *de novo* standard, "an appellate court is obligated to reach conclusions independent of decisions reached by the courts below." *State v. Ortiz*, 600 N.W.2d 805, 813 (Neb. 1999). Findings of facts are given "great deference," and are only reversed if they "are against the manifest weight of the evidence." *People v. Bonilla*, 120 N.E.3d 930, 933 (Ill. 2018). In assessing "alleged violations of constitutional rights," an appellate court must evaluate a trial court's decision according to "the totality of the circumstances as shown by the entire record." *Breuer*, 577 N.W.2d at 44. Applying this standard

to the facts of this case, the district court erred in denying Day's motion to suppress.

II. THE DISTRICT COURT ERRED IN DENYING DAY'S MOTION TO SUPPRESS BECAUSE LAW ENFORCEMENT CONDUCTED AN UNREASONABLE FOURTH AMENDMENT SEARCH BY ENTERING DAY'S APARTMENT BUILDING AND TESTING THE KEY FOB ON HER DOOR.

A Fourth Amendment search occurs when an individual has a "subjective expectation of privacy" that is "objectively reasonable," and an intrusion into this area occurs. *Katz v. United States*, 389 U.S. 347, 358-59 (1967). The district court erred in denying Day's motion to suppress because the officers conducted an unreasonable Fourth Amendment search by violating Day's reasonable expectation of privacy in the area in front of her apartment and other areas within her apartment building and physically intruding on her home by using a super-sensory device.

A. The officers violated Day's reasonable expectation of privacy in the area in front of her apartment, and physically intruded upon her home.

Where an expectation of privacy is both subjectively held and "objectively reasonable," that expectation of privacy must be "protected by the Fourth Amendment." *United States v. Miravelles*, 250 F.3d 1328, 1331 (11th Cir. 2002). To determine if an expectation of privacy is objectively reasonable, many courts have considered whether an individual "had the right to exclude others from the place in question" and if they "had taken normal precautions to maintain [their]

privacy.” *United States v. Trice*, 966 F.3d 506, 513 (6th Cir. 2020). In addition, a “device that is not in general public use” is used to “explore details of the home that would have previously been unknowable without physical intrusion, the surveillance is a ‘search’ and is presumptively unreasonable without a warrant.” *Kyllo v. United States*, 533 U.S. 27, 40 (2001). The officers conducted a privacy search as they (A) violated Day’s reasonable expectation of privacy in the sensor pad on her door, the area in front of her apartment, and other areas within her apartment building; and (B) physically intruded on her home through the use of a super sensory device on her door.

1. Day had a reasonable expectation of privacy in the area around the sensor pad on her door, the area in front of her apartment, and the common areas of her apartment building because these areas were limited in access and Day took steps to make maintain her privacy.

Day had a reasonable expectation of privacy in the area in the sensor pad on her door, the front of her apartment, and the common areas of her building because only tenants and approved guests were able to access her building and she took measures to maintain her privacy. An expectation of privacy is objectively reasonable where an individual has “the right to exclude others from the place in question” and has “taken normal precautions to maintain [their] privacy.” *Trice*, 966 F.3d at 513.

Apartment tenants have an objectively reasonable expectation of privacy in their dwellings and the surrounding areas even where other tenants and their approved guests may pass through some of those areas. In *United States v. Whitaker*, police officers brought their drug-sniffing dog to sniff outside of the appellant's apartment door in a locked apartment hallway with at "least six apartments." 820 F.3d 849, 851 (7th Cir. 2016). The court held that the use of the drug-sniffing dog invaded the appellant's objectively reasonable expectation of privacy. *Id.* at 853-54. The court reasoned that although the appellant could not exclude other tenants and their guests from the common hallway, "that does not mean the police can park a sophisticated drug-sniffing dog outside an apartment door" without a warrant. *Id.*

Similar reasoning was adopted by the court in *United States v. Concepcion* where a police officer inserted the appellant's key in the lock on the appellant's door within an apartment building without a warrant. 942 F.2d 1170, 1173 (7th Cir. 1991). The court held that the officer violated the appellant's expectation of privacy in his lock such that a Fourth Amendment search occurred. *Id.* at 1773.

Where multi-unit dwellings lack protective measures to exclude others such as locks, intercoms, or enclosures, courts have held that tenants lack an objectively reasonable expectation of privacy. In *Trice*, police officers hide a camera in the hallway outside of the appellant's basement-level apartment in a two-level

building. 966 F.3d. at 510-11. The court held that the appellant did not have a reasonable expectation of privacy in the hallway outside of his apartment. *Id.* at 514-15. It emphasized that “there was no intercom system, doorbell, or any other way to alert tenants about the presence of a visitor” and that the appellant did not take measures to “maintain his privacy.” *Id.*; *see also Miravelles*, 250 F.3d at 1331 (reasoning that the appellant lacked a reasonable expectation of privacy in the common areas of their apartment building when it was accessible to “workers,” “delivery people,” and “the public at large”).

Just like the appellant in *Whitaker* was justified in expecting that law enforcement would be excluded from the hallways of his apartment unless they had a warrant, Day was as justified in expecting that police officers testing a key fob on her door would not be permitted in her building without a warrant. This is true even if she could not exclude tenants and their permitted guests. Unlike the appellant in *Trice*, Day’s apartment building had an intercom, a key fob lock system, and a backup manual lock all at the exterior entrance. In addition, residents in Day’s apartment collected their mail at a “nearby mail center.” While the appellant in *Miravelles* might have expected non-residents to be present in their building, Day had a reasonable expectation that individuals that were not tenants and approved guests would not be able to enter because of the locks, intercom system, and otherwise limited access. Further, unlike the appellant in *Trice*, Day

took measures to maintain her privacy such as selecting a third-floor apartment that was tucked away from the other units on her floor. In testing the key fob, the officers conducted a Fourth Amendment search on the sensor pad on Day's apartment door like the officers in *Concepcion* did. The officers violated Day's reasonable expectation of privacy in the area in the sensor pad on her door, the front of her apartment, and the common areas of her building by entering her building and testing the key fob on her door.

2. The officers physically intruded upon Day's apartment by using a super-sensory device on her door.

The key fob that the officers tested on the sensor pad on Day's apartment front door was a super-sensory device, which was a physical intrusion of Day's apartment. The use of "sense-enhancing technology" that is "not in general public use" to obtain information "regarding the interior of the home that could not have otherwise been obtained without physical 'intrusion into a constitutionally protected area'" constitutes a "presumptively unconstitutional" Fourth Amendment search. *Kyllo*, 533 U.S. at 32-34 (quoting *Silverman v. United States*, 365 U.S. 505, 512 (2001)). This rule assures the "preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." *Kyllo*, 533 U.S. at 32-34.

Kyllo has established the majority rule that where a super-sensory device is used on the threshold of the home, there is an unreasonable Fourth Amendment

search. In that case, law enforcement officers used a thermal imaging device to detect heat from within the petitioner's home. *Id.* at 29-30. The Court held that this surveillance was an unreasonable Fourth Amendment search because the device was used to detect information "that would previously have been unknowable without physical intrusion." *Id.* at 40-41. Further, the Court rejected "a mechanical interpretation of the Fourth Amendment in *Katz*" that distinguishes between "off-the-wall" observations and "through-the-wall surveillance" because "that approach would leave the homeowner at the mercy of advancing technology." *Id.* at 35-36; *see also Whitaker*, 820 F.3d at 855 (holding that the rule of *Kyllo* "reasonably indicate[s]" that the use of a drug-sniffing dog without a warrant is an unreasonable Fourth Amendment search); *Jardines*, 569 U.S. at 11 (reasoning that where devices are used to "explore details of the home (including its curtilage), the antiquity of the tools they bring along is irrelevant"). The only notable challenges to this majority rule have been dissenting opinions by Supreme Court justices. *See Kyllo* 533 U.S. at 29 (Stevens, J., dissenting); *Jardines*, 569 U.S. at 18-21 (Alito, J., dissenting); *Katz*, 389 U.S. at 374 (Black, J., dissenting).

Much like the thermal imaging device used to detect heat from the inside of the petitioner's home in *Kyllo*, here the key fob was used by the officers to detect information "regarding the interior of the home." In addition, when Day accidentally dropped her key fob in the street, she did not intend to make it

available to the “general public.” As made clear by the majority in *Kyllo*, a court may not consider whether a device extended into the home when determining whether physical intrusion occurred. The officers conducted a “presumptively unreasonable search” by using the key fob, a super-sensory device not intended to be available to the general public, to obtain information otherwise unknowable without physical intrusion into Day’s home.

CONCLUSION

For the reasons stated above, the decision of the United States District Court for the District of Columbia must be reversed.

Respectfully submitted,

/s/ Hannah Klaus

Hannah Klaus
Assistant Federal Public
Defender
625 Indiana Avenue, NW
Washington, DC 20004

Counsel for Appellant

April 4, 2022

Applicant Details

First Name **Violet**
 Last Name **Konopka**
 Citizenship Status **U. S. Citizen**
 Email Address vkonopka@arizona.edu
 Address

Address

Street
4937 W Doria Dr
City
Tucson
State/Territory
Arizona
Zip
85742

Contact Phone Number **8159977930**

Applicant Education

BA/BS From **Arizona State University**
 Date of BA/BS **May 2020**
 JD/LLB From **University of Arizona James E. Rogers
College of Law**
<http://www.law.arizona.edu/>
 Date of JD/LLB **May 11, 2024**
 Class Rank **50%**
 Law Review/Journal **Yes**
 Journal(s) **Arizona Journal of Emerging
Technologies**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Saul Lefkowitz Moot Court (Trademark
Law)**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
Externships **Yes**

Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning Organization**

Recommenders

Taylor, Zachary
zachary@shepherdlawoffice.com

Eisenmann, Kyle
keisenmann@arizona.edu

Herr-Cardillo, Joy
jherrcar@arizona.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

VIOLET J. KONOPKA

4937 W. Doria Dr., Tucson, AZ 85742 • 815-997-7930 • vkonopka@arizona.edu

June 4, 2023

The Honorable Jamar Walker
United States District Court, Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at the University of Arizona, James E. Rogers College of Law and the Senior Articles Editor of the *Arizona Law Journal of Emerging Technologies*. I am writing to express my interest in a clerkship in your chambers for the 2024-2025 term.

After completing my education here in Arizona, I am excited about the potential opportunity to return to begin my legal career in the beautiful state of Virginia. I am particularly interested in a clerkship in your chambers because I believe it will allow me to continue to explore many different aspects of the law and prepare me for any practice area I choose to pursue. While in law school, I have taken classes in contracts, intellectual property law, and civil and criminal procedure among others. In addition, this year I had the opportunity to serve as a Writing Center Fellow where I worked with students in all degree programs offered by the law school to help advance their writing and research skills. I will also continue to develop my legal writing and research through a judicial externship with the Honorable William Montgomery at the Arizona Supreme Court this upcoming spring. I believe that with these experiences, I will be able to contribute meaningfully to your chambers.

Enclosed please find a copy of my resume and my most recent law school transcript. I have also included an excerpt of an appellate brief prepared for the Saul Lefkowitz Trademark Moot Court competition. Finally, letters of recommendation from Professor Joy Herr-Cardillo and my previous supervisors Zachary Taylor and Kyle Eisenmann are also included.

If you have any questions, please feel free to contact me at the above email address and telephone number. Thank you very much for considering my application.

Sincerely,

Violet Konopka

VIOLET J. KONOPKA

4937 W. Doria Dr., Tucson, AZ 85742 • 815-997-7930 • vkonopka@arizona.edu

EDUCATION

University of Arizona, James E. Rogers College of Law, Tucson, AZ

Candidate for Juris Doctor, May 2024, GPA: 3.572/4.0, Rank: Top 50%

- Journal: *Arizona Law Journal of Emerging Technologies* (Senior Articles Editor)
- Moot Court: Saul Lefkowitz Trademark Moot Court Team
- Honors and Awards: TechLaw Fellowship (Full Tuition); Dean's List (4 semesters)
- Activities: Associated Students of the University of Arizona (Supreme Court Justice); Writing Center Fellow; Law Women's Association; Arizona Law Ambassador

Arizona State University, Tempe, AZ

Bachelor of Science, Biological Sciences (Conservation Biology and Ecology), May 2020

EXPERIENCE

The Hon. William Montgomery, Arizona Supreme Court, Phoenix, AZ

Judicial Extern, Spring 2024

Collins Aerospace, Remote

Contracts Co-op, January 2023 - Current

Interpret and manage contract documents in the Power & Controls Division. Prepare and participate in the review of terms and conditions of customer agreements.

Veterans' Advocacy Law Clinic, Tucson, AZ

Certified Limited Practice Student, Spring & Summer 2023

Represent former military service members before local Veterans' Treatment Courts at both the city and county level.

Law Office of Denice R. Shepherd, Tucson, AZ

Law Clerk, May 2022 – December 2022

Prepared filings for probate court, including letters of appointment as guardian and/or conservator and petitions for determination of heirs. Drafted, reconciled, and filed annual accounts for conservatorships and estates as well as informal accounts for trusts.

University of Arizona Athletics Compliance Office, Tucson, AZ

Legal Extern, Spring & Fall 2022

Surveyed the institution's compliance monitoring system for any possible violations or areas where Arizona Athletics staff needed more education.

U.S. Attorney's Office – District of Colorado, Denver, CO

Legal Assistant, January 2021 – July 2021

Prepare and review legal documents and communications for civil division attorneys.

Arizona Attorney General's Office, Phoenix, AZ

Administrative Assistant, May 2020 – August 2020

Managed clerical and organizational needs for eight Department of Child Safety attorneys.

PERSONAL

- Interests: thrift shopping; playing and collecting board games; reading thrillers

Name: Violet Konopka
Student ID: 23702888
Birthdate: 04/07/1998

Page 1 of 2
Print Date: 06/08/2023
Unofficial Transcript

Institution Info: The University of Arizona

Beginning of Law Record

Academic Program History

Program: James E. Rogers College of Law
03/22/2021 Active in Program
Major in Law

Fall 2021					
Course	Description	AHRS	EHRS	Grade	Points
LAW 600A	Contracts	4.000	4.000	A-	14.668
LAW 601A	Civil Procedure	4.000	4.000	A-	14.668
LAW 603A	Legal Resrch, Analysis & Com I	3.000	3.000	A-	11.001
LAW 604C	Torts	4.000	4.000	B	12.000
LAW 679B	Preparing to Practice	1.000	1.000	P	0.000
		AHRS	EHRS	QHRS	Points
Term GPA:	3.489	16.000	16.000	15.000	52.337
Transfer Term GPA		0.000	0.000	0.000	0.000
Combined GPA	3.489	16.000	16.000	15.000	52.337
		AHRS	EHRS	QHRS	Points
Cum GPA:	3.489	16.000	16.000	15.000	52.337
Transfer Cum GPA		0.000	0.000	0.000	0.000
Combined Cum GPA	3.489	16.000	16.000	15.000	52.337
Term Honor: College of Law Dean's List					

Spring 2022					
Course	Description	AHRS	EHRS	Grade	Points
LAW 602	Criminal Procedure	3.000	3.000	B+	9.999
LAW 603B	Legal Rsrch, Analysis & Com II	2.000	2.000	A-	7.334
LAW 605	Property	4.000	4.000	B+	13.332
LAW 606	Constitutional Law I	3.000	3.000	B-	8.001
LAW 644C	Int'l Bus Transactions	3.000	3.000	A	12.000
		AHRS	EHRS	QHRS	Points
Term GPA:	3.378	15.000	15.000	15.000	50.666
Transfer Term GPA		0.000	0.000	0.000	0.000
Combined GPA	3.378	15.000	15.000	15.000	50.666

Cum GPA:	3.433	AHRS	EHRS	QHRS	Points
Transfer Cum GPA		0.000	0.000	0.000	0.000
Combined Cum GPA	3.433	31.000	31.000	30.000	103.003
Term Honor: College of Law Dean's List					

Fall 2022

Course	Description	AHRS	EHRS	Grade	Points
LAW 615H	Media Law	2.000	2.000	A-	7.334
LAW 653D	Writing Fellows	3.000	3.000	A	12.000
LAW 655B	Copyright Law	2.000	2.000	B+	6.666
LAW 655D	Journal of Emerging Technology	1.000	1.000	P	0.000
LAW 655F	Int'l Intellectual Property	3.000	3.000	A-	11.001
LAW 664A	Sports Law	2.000	2.000	B+	6.666
LAW 693	Externship	2.000	2.000	P	0.000
		AHRS	EHRS	QHRS	Points
Term GPA:	3.639	15.000	15.000	12.000	43.667
Transfer Term GPA		0.000	0.000	0.000	0.000
Combined GPA	3.639	15.000	15.000	12.000	43.667
		AHRS	EHRS	QHRS	Points
Cum GPA:	3.492	46.000	46.000	42.000	146.670
Transfer Cum GPA		0.000	0.000	0.000	0.000
Combined Cum GPA	3.492	46.000	46.000	42.000	146.670

Spring 2023

Course	Description	AHRS	EHRS	Grade	Points
LAW 608	Evidence	3.000	3.000	A-	11.001
LAW 609	Professional Responsibility	3.000	3.000	A-	11.001
LAW 653D	Writing Fellows	2.000	2.000	A	8.000
LAW 655A	Trdmrks+Unfair Compet	2.000	2.000	A-	7.334
LAW 661E	Trademark Moot Court	2.000	2.000	P	0.000
LAW 674	Clinical Practice	4.000	4.000	A	16.000
Course Topic: Veterans' Advocacy Law Clinic					
		AHRS	EHRS	QHRS	Points
Term GPA:	3.810	16.000	16.000	14.000	53.336
Transfer Term GPA		0.000	0.000	0.000	0.000
Combined GPA	3.810	16.000	16.000	14.000	53.336

Name: Violet Konopka
 Student ID: 23702888
 Birthdate: 04/07/1998

Page 2 of 2
 Print Date: 06/08/2023
 Unofficial Transcript

		<u>AHRS</u>	<u>EHRS</u>	<u>QHRS</u>	<u>Points</u>
Cum GPA:	3.572	62.000	62.000	56.000	200.006
Transfer Cum GPA		0.000	0.000	0.000	0.000
Combined Cum GPA	3.572	62.000	62.000	56.000	200.006

End of Law Record

*Law Office of
Denice R. Shepherd, P.C.*

March 17, 2023

*RE: Violet Konopka
Letter of Recommendation*

To Whom It May Concern:

It is my pleasure to recommend Violet Konopka for a law clerk position. Violet worked as a law clerk at our office over the summer and during the fall semester of 2022. She is smart, well-spoken, and a critical thinker. Violet will be an asset wherever she works and I have full confidence that she is going to be an excellent attorney.

I am an associate at our probate law firm and I reviewed and monitored much of Violet's work. Violet demonstrated a strong desire to learn and carefully analyzed issues within the various cases she worked on with us. She was able to quickly learn and complete the many new tasks that were assigned to her, including, but not limited to, conducting research and analysis to determine the heirs of an estate, drafting various pleadings for probate and guardianship/conservatorship cases, preparing accountings, inventorying property, and assisting with multiple stages of probate and conservatorship administration. Violet is efficient in her work and is capable of effectively juggling multiple assignments. I was impressed with her ability to successfully manage her workload at our office, while still studying and attending law school. She exhibited dedication to the work at our office; for example, she even took time out of a trip to her hometown to help us with a banking matter at a financial institution in her home state. It is clear to me that Violet has the work ethic, drive, and organization skills necessary to be successful in the legal profession.

In addition to her work ethic, Violet is a pleasure to work with because of her positive attitude and calm demeanor. Even on days where stress may have been running high in the office, Violet always seemed cool, calm, and collected. I cannot recall ever witnessing her lose her composure. She has exceptional communication skills, both written and oral. I witnessed Violet's ability to professionally and effectively communicate with supervisors, coworkers, clients, and third parties. Her professional demeanor and communication abilities are invaluable.

Lastly, it is important to note that Violet thinks critically and is analytical in her work. She asks great questions and often helped me to better analyze issues in a case. She has common sense and can come up with practical solutions to problems.

2424 East Speedway Blvd
Tucson, Arizona 85719

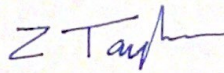
Zachary@shepherdlawoffice.com

(520) 623-3526 - Office
(520) 622-6971 - Fax

RE: Violet Konopka
March 17, 2023
Page 2 of 2

It was pleasure to have Violet as part of our team and you would be lucky to have her as part of yours. I have no doubt that her work ethic and skills will allow her to be successful as a law clerk and throughout her career.

Sincerely,

A handwritten signature in blue ink, appearing to read "Z Taylor", with a stylized flourish at the end.

Zachary Taylor
Attorney at Law



ARIZONA WILDCATS

May 12, 2023

To whom it may concern,

It is my pleasure to deliver this letter of recommendation for Violet Konopka as she pursues a clerkship position with you. As Associate Director of Athletics for Compliance at the University of Arizona, I have been fortunate to oversee Violet in her role as an extern with our office as she progressed through law school. Her analytic skills, legal research writing talents and interpersonal skills make her an ideal candidate for your clerkship position.

The Arizona Athletics Compliance Office relies on its legal externs to assist with the day-to-day operations of the office. From her start date, it was clear that Violet had exceptional legal research and writing skills. As a result, she served an integral role in our office when it came to the analysis of NCAA and Pac-12 Conference rules and regulations. Her work product was consistent in that it was meticulously researched, coherently written (as well as persuasively, when necessary) and, most importantly, produced the correct outcome.

In addition to her reliable and exceptional work product, Violet's interpersonal skills will make her an asset to your office. Reserved yet personable, Violet is capable of thriving in any environment and working with individuals with various personalities. She demonstrated as much working in our office, where she balanced in-office and remote work while building effective relationships with a variety of staff members in the athletics department. In short, Violet is a joy to be around and work with.

In light of her experience, knowledge and skills and her commitment to excellence in all that she endeavors, I am confident that Violet will bring a high degree of value as a clerk in your chambers.

Please do not hesitate to contact me at (267) 664-3889 if you have any questions.

Sincerely,

Kyle Eisenmann
Associate Director of Athletics, Compliance
UNIVERSITY OF ARIZONA

BEAR DOWN

McKale Memorial Center, 1 National Championship Dr #231, P.O. Box 210096, Tucson, AZ 85721-0096
520.621.8350 | Fax: 520.621.9690 | ArizonaWildcats.com

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write this letter of recommendation for Violet Konopka. I met Violet in the Spring of 2022 when she was enrolled in my section of Legal Research, Analysis, and Communication. This is a two-semester required course for first year law students. During the spring semester, we focus on written and oral advocacy. Class time is devoted to team-based learning and in-class exercises. Outside of class and on an individual basis, each student is required to research and write a trial level motion. The students turn in drafts of their individual assignment, and I provide them with extensive feedback on both their writing and their legal analysis. I also have individual conferences with each student to discuss the feedback and answer any questions they may have. The students are then responsible for finalizing the assignment based upon my feedback.

The students are also required to argue that motion in a mock oral argument before me and against a classmate who represents the opposing side. Finally, the students are required to complete a final exam. For that final, the students are required to draft and finalize a closed-research writing assignment (typically the argument section of another trial level motion), which must be completed within an eight-hour period.

In the Spring of 2022, the class was relatively small (25 students) and met twice a week over the entire semester. From my observations and interactions with Violet, I would say that in addition to her intelligence and analytical abilities, a principal strength was her ability to work with others. As noted above, in this class we use team-based learning where students are assigned to permanent teams of four to five students who work together for the entire semester. This approach requires students to do a significant amount of reading beforehand and come to class prepared. Once in class, the teams work together to complete weekly quizzes and in-class exercises. It was quickly apparent that Violet was a valued member of her team. Watching her team work through the group quizzes and exercises, it was obvious that she was an active participant. And, because team-based learning emphasizes consensus, Violet was careful to solicit the input of her fellow team members, and to make sure that every member of the group was fully heard. This was reflected in the final assessments that she received from her teammates, which were overwhelmingly positive.

Violet's work product in the class was consistently very good. Her research was thorough, and her writing was well-organized, thoughtful, and persuasive. Violet was also a very effective oral advocate. She was composed, professional, and persuasive in her arguments. She did a good job answering difficult questions and countering the arguments of opposing counsel. Violet also did very well on the final exam (which is graded anonymously). Her score of 94 was well above the median (88.68) and mean (89) and placed her in the top third. She earned an A- in the course.

I had the opportunity to work with Violet again this past year, her second year of law school, when she began her tenure at the Arizona Law Writing Center as a Writing Fellow. The Writing Center is supervised by the Legal Writing Department at Arizona Law and I am the Professor currently responsible for overseeing it. The Center is staffed by three Writing Fellows, typically students who are in their second or third year of law school, who provide writing-support services and resources to students in all University of Arizona Law degree programs. That support is typically in the form of individual written and in-person feedback on student drafts and other written work. The fellows also organize and present workshops on writing-related topics to students in Arizona Law's degree programs.

Because so much of the work of the Center writing fellows is done one-on-one with students, I tend to take a very hands-off approach in my supervision. That said, because many of my 1L students take advantage of the Writing Center, I often hear from them if they found a particular Writing Center fellow helpful. Over the course of this past year, it was quickly apparent that Violet was a popular and effective writing fellow. I frequently hear from students how much she has helped them in their sessions with her. I have also been able to observe Violet directly in several of the workshops that the Center puts on over the school year. Her manner of presenting is very engaging, and she has an easy rapport with students.

Much of my direct contact with Violet this past year was during the fall semester working on our annual "Escape Room" capstone project. The Escape Room takes place at the end of the first semester and is a fun competition for the 1L students, who are challenged to apply their legal writing skills to solve a series of clues and "escape" from the school's mock courtroom. For things to run smoothly, we need a few 2L volunteers to take a leadership role. Technically, the writing fellows assigned to the Writing Center are not even required to help with the Escape Room, but Violet generously volunteered to be part of the "creative team," a committee of three to five writing fellows who are responsible for crafting a fun backstory, designing the flow of the room, and finalizing the clues. Violet was an enthusiastic collaborator on the project and made significant contributions to an event that was both educational and fun!

In sum, I enthusiastically recommend Violet as a judicial law clerk. She is a dedicated law student with excellent writing skills and demonstrated professionalism. She is also a delightful person who is a pleasure to work with.

Sincerely,

Joy Herr-Cardillo - jherrcar@arizona.edu

Joy E. Herr-Cardillo
Associate Clinical Professor of Law

Joy Herr-Cardillo - jherrcar@arizona.edu

VIOLET J. KONOPKA

4937 W. Doria Dr., Tucson, AZ 85742 • 815-997-7930 • vkonopka@arizona.edu

WRITING SAMPLE

Submitted For: Saul Lefkowitz Trademark Moot Court Competition

Background: This is an appellate brief written for a fictional case which is summarized in the *Statement of the Case*. This excerpt is limited to the counterclaim of false endorsement and, with the exception of the *Statement of the Case*, consists solely of my own work.

C.A. No. 20-107588

D. Ct. No. CV 22-1252

In the

**UNITED STATES COURT OF APPEALS
FOR THE UTOPIAN CIRCUIT**

January 2023 Term

REX'S RECORDS, INC.,

Plaintiff-Appellant,

v.

BTX, INC.,

Defendant-Appellee.

On Appeal from a Judgment of the United States
District Court for the Southern District of Utopia

BRIEF FOR APPELLEE BTX, INC.

QUESTION PRESENTED

The Lanham Act protects against unauthorized use of identity, in connection with goods and services, in such a way that misleads consumers to believe the individual has sponsored or endorsed the product or service. Did the district court err in concluding Appellant falsely endorsed its goods and services through repeated use of BTX’s likeness on social media and in its physical retail location?

STATEMENT OF THE CASE

I. Procedural History

Appellee (“BTX”) is a registered corporation for the boy band BTX. R. at 2. On May 1, 2022 Appellant filed suit in the Southern District of Utopia alleging trademark infringement based on likelihood of confusion under Section 32 of the Lanham Act. *Id.* BTX denied infringement and filed a counterclaim for false endorsement under Section 43(a) of the Lanham Act. *Id.*

II. Statement of the Facts

After three years of building a reputation as a pop music group, BTX achieved international success in 2022, having “regularly topp[ed] music charts.” *Id.* at 6. The group consists of musicians Jason Brayberlake, Buster, J-Brad, Baylor, and Tom. *Id.* at 6. During this same time and a few years prior, Appellant’s store, Rex’s Records, underwent renovations in an attempt to attract more customers and increase sales revenue. *Id.* at 3-4. Appellant updated the store’s music collection to include a more modern sound, including music by BTX. *Id.* at 4, 8. To demonstrate to customers that Rex’s Records was not “old and stuffy” but to describe it as “new and [with] the best music,” Appellant displayed a set of BTX action figures on a pedestal in the storefront to capitalize on the revenue produced by the revamp. *Id.* at 6. The action figures were outfitted with a sign that read “REX’S RECORDS: OFF THE CHARTS!,” and BTX’s CDs were

placed nearby. *Id.* Appellant then posted a picture of the action figures to Speedgram under Rex's Record's account, with hashtags that included "BTX" and "REXandBTX." *Id.* The promotional attempt was successful, as the post received 10,000 likes and BTX CDs sold out. *Id.*

ARGUMENT

Rex's Records use of BTX action figures in the store and in a Speedgram post is likely to cause consumer confusion about BTX's endorsement of Rex's Records and, with no available defense, this use of BTX's name and image constitutes false endorsement.

The overarching goal of the Lanham Act is to provide protection for the consuming public. *Champion v. Moda Operandi, Inc.*, 561 F. Supp 3d 419, 433 (S.D.N.Y. 2021). The main query in a false endorsement claim is whether the public has been falsely led to believe that the owner of the mark sponsors or approves of the goods or services being offered by the defendant. *Beastie Boys v. Monster Energy Co.*, 66 F. Supp. 3d 424, 448 (S.D.N.Y. 2014). The statute that governs these claims is Section 43(a) of the Lanham Act which states that someone who uses a mark in a way that "is likely to cause confusion, or to cause mistake, or to deceive...as to the origin, sponsorship, or approval of his or her goods, services or commercial activities by another person" will be held civilly liable. 15 U.S.C. § 1125.

There are two queries that must first be explored to determine if this statute prohibits the disputed actions: (1) whether there was an endorsement of the defendant's product and (2) whether that endorsement is attributable to the plaintiff. *Beastie Boys*, 66 F. Supp. 3d at 449. If these questions are answered in the affirmative, a likelihood of confusion analysis must be completed. *Id.* at 456. Although there is some variation across circuits, the analysis in these cases is generally very similar to, or even the same as, the likelihood of confusion analysis used in infringement cases. *See, e.g., Id.; Chanel, Inc. v. RealReal, Inc.*, 449 F. Supp. 3d 422, 437 (S.D.N.Y. 2020); *Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1149-50 (9th Cir. 2002). The only

difference is that the “mark” at issue in these false endorsement claims is the plaintiff’s identity. *Hauf v. Life Extension Found.*, 547 F. Supp. 2d 771, 777 (W.D. Mich. 2008). If this likelihood of confusion test comes out on the side of the plaintiff, the analysis typically continues to determine if the defendant has a fair use defense. *New Kids on the Block v. News Am. Publ’g, Inc.*, 971 F.2d 302, 306-08 (9th Cir. 1992).

A. The use of BTX action figures and the contested Speedgram post are false attributions of BTX’s endorsement of Rex’s Records.

For a contested action to be considered an endorsement, it must be made with the goal of promoting a product. *Beastie Boys*, 66 F. Supp. 3d at 448. The Court can look to the action itself and the statements of the defendant relating to the purpose of the action. *Id.* at 449. Here, Appellant was plainly trying to increase sales by using the action figures and making a post on the Rex’s Records Speedgram account.

The next question is whether there is a reasonable basis for a member of the public seeing the display and post to conclude that BTX approved of the endorsement of Rex’s Records. The prominence of the mark, the suggestion of association between the mark and the endorsement, and the textual references to the mark should all be looked at in making this determination. *Id.* at 449-50. In *Beastie Boys*, the court held that the contested video did provide a reasonable basis of perceived endorsement as the video prominently displayed the mark, juxtaposed the mark with that of the endorsed product, and contained textual references to the infringed mark. *Id.*

Here, the BTX action figures were prominently displayed in the store and the Speedgram post, the action figures were set up with one of the members holding a Rex’s Records sign, and the caption of the Speedgram post clearly made textual reference to a relationship between Rex’s Records and BTX. Like the contested action in *Beastie Boys*, there is sufficient evidence that the action figure display and Speedgram post included enough information for a customer to

reasonably conclude that BTX had endorsed Rex's Records. Thus, Rex's actions were in fact a false endorsement attributable to BTX.

B. There is a likelihood of confusion about BTX's endorsement of Rex's Records as all the relevant factors favor BTX.

Although the circuits vary slightly on which factors should be used in the likelihood of confusion analysis for false endorsement claims, it is ultimately up to the discretion of the Court, and the importance of each should be evaluated for each case. *Fortune Dynamic v. Victoria's Secret Stores Brand Mgmt.*, 618 F.3d 1025, 1031 (9th Cir. 2010). The factors relevant in this case include: (1) the strength of the BTX's name and image; (2) the degree of similarity between the name and image of BTX and the name and image used by Rex's Records; (3) the relatedness of the products and consumers; (4) the likelihood that the market for BTX and Rex's Records will converge; (5) consumer confusion about BTX's endorsement of Rex's Records; (6) Rex's Records lack of good faith in using BTX's name and image; and (7) the ordinary care taken by a typical consumer of these goods. *See Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2nd Cir. 1961).

The commercial success of a mark can be used to establish its strength. *M2 Software v. Madacy Entm't*, 421 F.3d 1073, 1081 (9th Cir. 2005). The amount of familiarity that the defendant's customers have with the false endorser is also relevant to the strength analysis. *Beastie Boys*, 66 F. Supp. 3d at 456. In this case, BTX is a hugely popular boy band that has had international success both with its musical recordings and its live concerts. Even the recognition of BTX's likeness in the store and social media post further demonstrates the strength of BTX's mark. Appellant's customers regularly came in and made purchases after recognizing the action figures and its Speedgram post got over 10,000 likes despite it being its first post on the social media platform. This factor is heavily in favor of a false endorsement finding.

When both parties are targeting the same group of consumers to the point that the goods are complementary, less similarity is required to find a likelihood of confusion. *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 350 (9th Cir. 1979). Since Rex's Records and BTX have a diverging customer base, the similarity required for this factor to favor BTX is low. Even without this lower standard, the actual image of the plaintiff is the strongest similarity imaginable. *Gibson v. BTS N., Inc.*, 2018 U.S. Dist. LEXIS 24132, at *16 (S.D. Fla. Feb. 14, 2018). Here, Rex used action figures that were specifically made to look exactly like the members of the band and were advertised and sold in that manner. The action figures' entire purpose was to present as similar an image as possible.

Additionally, the entire use must be looked at rather than just the individual parts. *AMF*, 599 F.2d at 351. Here, Rex chose to use action figures of all five band members to clearly represent the entire band. It is hard to imagine that someone looking at these five action figures that look like Jason Brayberlake, Buster, J-Brad, Baylor, and Tom could conclude that they represent anything other than their internationally recognized boy band. Thus, the similarity is incredibly high and, since the requirement for similarity is low here, this factor weighs heavily in favor of BTX.

When the plaintiff and defendant are both appealing to the same consumer base and use the same marketing channels to reach those consumers, the relatedness of the consumers is high. *Gibson*, 2018 U.S. Dist. LEXIS 24132, at *22. This factor is further strengthened if the goods and services perform the same function. *Daddy's Junky Music Stores, Inc. v. Big Daddy's Family Music Ctr.*, 109 F.3d 275, 282 (6th Cir. 1997). Here, BTX is largely in the market of providing live entertainment while Rex's Records sells recordings of music which does admittedly show a bit of separation between their products. However, Appellant specifically chose to use BTX's

likeness as it was hoping to draw attention from its customer base. In addition, Rex's Records is using Speedgram, a platform that BTX fans are known to use, to reach its own customer base. The overlap between BTX's customers and Rex's Records' customers and their overlapping use of Speedgram pushes the analysis further towards a finding of false endorsement.

Although BTX and Rex's Records do not currently offer the same product, a "strong possibility" that either party may expand to compete with the other would weigh in favor of a false endorsement finding. *AMF*, 599 F.2d at 354. There is admittedly a very slim chance that Rex's Records would ever break into the market of concert sales. However, this factor also requires an inquiry into BTX's potential expansion into Rex's Records market. Although currently BTX is in the business of providing live performances, it is entirely plausible that BTX would also want to sell physical copies of its music. Although not as strongly as the other factors, this possibility of expansion means that this factor also favors BTX.

Proof of actual confusion can be extremely persuasive evidence of likelihood of confusion in a false endorsement analysis. *Id.* at 352. The success of Rex's Records' Speedgram post and the customers' positive response to seeing the action figures in the store could be evidence of actual confusion. Even without this though, this factor does not afford Appellant any favor as lack of actual confusion evidence is not dispositive. *Id.* at 353.

When an alleged infringer purposefully uses a similar mark to someone else's, it is assumed that they can successfully achieve their goal of deceiving the public. *Id.* at 354. A determination must be made as to whether Appellant specifically chose to use BTX's image to benefit from its goodwill to truly understand the intent behind Appellant's actions. *Gibson*, 2018 U.S. Dist. LEXIS 24132, at *22-23 (quoting *Caliber Auto. Liquidators, Inc. v. Premier Chrysler, Jeep, Dodge, LLC*, 605 F.3d 931, 940 (11th Cir. 2010)). Rex's Records was struggling to keep

up with the changing music market and, as the record shows, Appellant was hoping to show the younger crowd that it understood what they wanted when it chose to order the action figures. Appellant had clear knowledge that BTX was popular among the younger crowd and using their image would make Rex's Records more popular with that audience. With this intent in mind, Appellant used BTX's image in bad faith meaning this factor weighs in favor of BTX.

Finally, the "typical buyer exercising ordinary care" standard must be analyzed. *AMF*, 599 F.2d at 353. With cheaper goods like CDs, it can be assumed that the typical buyer will not use great care in their purchases. *Id.* Also, typical CD buyers are naïve consumers. *M2 Software*, 421 F.3d at 1084. Here, Rex's Records is just selling musical recordings, which are relatively cheap products, to customers who are not particularly well informed. This means that the likelihood of confusion is high which, once again, favors a finding of false endorsement. It is apparent that everything points towards a finding that Rex's Records' use of BTX's action figures in the store along with the contested Speedgram post is likely to cause customer confusion about BTX's endorsement of Rex's Records.

C. Appellant's use of BTX's name and image is not permitted under a fair use defense.

The final question in a false endorsement claim is that of a fair use defense. Even with a true claim of false endorsement, Appellant would be permitted to continue this use if there was a fair use for it. *New Kids on the Block*, 971 F.2d at 306. The two types of fair use defenses in trademark law are descriptive and nominative fair use but, as Appellant is not using BTX's mark to describe its goods, descriptive fair use cannot be used to justify its actions. *See id.* at 306-307. The nominative fair use defense has three requirements: (1) use of the mark must be necessary to identify the goods or services; (2) the mark is only used as reasonably necessary; and (3) the use must not suggest sponsorship or endorsement of the mark's holder. *Id.* at 308.

Here, Appellant's use of BTX's name and image fails all three requirements. Appellant's use of BTX's image was by no means necessary to the identification of the goods. Although Rex's Records had been struggling, the store had had a boom in business after Appellant began its "OFF THE CHARTS!" business revamp. Even if Rex's Records was nearing bankruptcy, there would still be no use for it to use BTX's mark as it in no way defines or identifies the goods provided by Rex's Records. The first requirement is thus not met.

Since there was no legitimate reason to use BTX's image in the first place, there is no maximum reasonable use, and the second requirement fails. Like the permitted use in *New Kids*, it would have been perfectly reasonable for Rex's Records to use BTX's name as necessary to describe the goods it was selling but Rex's Records failed to stop at this reasonable point. *Id.* Finally, the previous likelihood of confusion analysis clearly shows that Appellant's use of the BTX name and image does suggest that BTX endorses Rex's Records and thus the third and final requirement for nominative fair use fails.

With the descriptive and nominative fair use defenses failure, Appellant has no legitimate defense for its use of BTX's name and image. The use of BTX action figures and the contested Speedgram post are false attributions of BTX's endorsement of Rex's Records that are likely to cause customer confusion. Therefore, the district court did not err in finding that Appellant's use of the BTX action figures constitutes false endorsement, and we respectfully ask the Court to affirm this false endorsement decision.

CONCLUSION

Accordingly, we respectfully ask this Court to affirm the district court's grant of summary judgment in favor of BTX.

Applicant Details

First Name	Jacob
Last Name	Kornhauser
Citizenship Status	U. S. Citizen
Email Address	jacob.kornhauser@duke.edu
Address	<div><div>Address</div><div>Street</div><div>2011 Magnolia Tree Lane</div><div>City</div><div>Durham</div><div>State/Territory</div><div>North Carolina</div><div>Zip</div><div>27703</div><div>Country</div><div>United States</div></div>
Contact Phone Number	8153223914

Applicant Education

BA/BS From	University of Missouri
Date of BA/BS	May 2017
JD/LLB From	Duke University School of Law
	https://law.duke.edu/career/
Date of JD/LLB	May 17, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Duke Law Journal
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Blocher, Joseph
Blocher@law.duke.edu
(919) 613-7018

Buell, Sam
buell@law.duke.edu
919-613-7193

Garrett, Brandon
bgarrett@law.duke.edu
919-613-7090

Baker, Sarah
baker@law.duke.edu
919-613-7039

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jacob Kornhauser
2011 Magnolia Tree Ln.
Durham, NC 27703

The Honorable Judge Jamar K. Walker
United States District Court for the Eastern District of Virginia
Joseph E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am writing to express my strong interest in clerking for you for the 2024-25 term or any term thereafter. I highly value the opportunity to be among your first clerks on the federal bench. Additionally, my wife is from Washington, D.C. and I will return there to work, so being relatively close to her aging parents is important. I expect to receive my J.D. in May 2024 and am available to clerk after graduation.

The skills I learned in my first career as a broadcast journalist and as a published author have transferred well to law school and will make me a successful clerk. I have years of experience working on tight deadlines, collaborating with others, and communicating complex information in a digestible way.

I applied my skills in the legal context last summer while working under Jamie Lau at the Duke Wrongful Convictions Clinic. In this position I wrote several briefs from start to finish. One such brief earned our client's estate the statutory maximum for wrongful conviction compensation in a case of first impression.

I also have experience with academic research. I worked under Professor Buell, researching the pitfalls prosecutors faced in the white-collar criminal prosecutions stemming from the mortgage-backed securities, LIBOR, and Forex crises.

Attached please find my resume, Duke Law transcript, writing sample, and letters of recommendation from Professors Joseph Blocher, Brandon Garrett, Sam Buell, and Sarah Baker. I am happy to provide any additional information. I thank you for your consideration.

Best,

Jacob Kornhauser
Duke Law '24 J.D. Candidate

JACOB KORNHAUSER

2011 Magnolia Tree Lane, Durham, NC 27703
jacob.kornhauser@duke.edu | (815) 322-3914

EDUCATION

Duke University School of Law, Durham, NC

Juris Doctor expected, May 2024

GPA: **3.79**

Honors: *William R. Patterson Scholar*

Dean's Award (Evidence)

Activities: Research Editor, *Duke Law Journal*
 Duke Wrongful Convictions Clinic

University of Missouri-Columbia, Columbia, MO

Bachelor of Arts in Broadcast Journalism, *magna cum laude*, May 2017

GPA: **3.79**

Honors: University of Missouri Honors College

Activities: Mentor with Big Brothers, Big Sisters
 Volunteer Youth Sports Coach

PERSONAL INTERESTS

Baseball

Writing Non-Fiction

Hiking

Videography & Photography

Survivor (TV Show)

EXPERIENCE

Paul Hastings, Washington, D.C.

Summer Associate, May 2023 – August 2023

Professor Samuel Buell, Durham, NC

Research Assistant, May 2022 – Present

- Research and edit Prof. Buell's academic papers on individual white-collar prosecutions.

Professors Sarah Baker & Brandon Garrett, Durham, NC

Teaching Assistant, August 2022 – Present (Prof. Garrett Evidence in Fall 2023)

- Collaborate with professors, hold office hours, and grade student papers.

Duke Wrongful Convictions Clinic, Durham, NC

Clinic Associate, May 2022 – August 2022

- Wrote briefs, affidavits, and legal memos for supervising attorneys.
- Obtained \$750,000 statutory award in a wrongful conviction compensation case of first impression.

FOX Sports, Los Angeles, CA

Associate Producer, May 2019 – August 2021

- Wrote and produced pieces for FOX Sports video franchises and top on-air talent.

KDRV-TV (ABC), Medford, OR

Reporter & Producer, May 2017 – March 2019

- Produced, anchored, and reported on live television, writing news copy on tight deadlines.

PUBLICATIONS

JACOB KORNHAUSER, *THE CUP OF COFFEE CLUB: 11 PLAYERS AND THEIR BRUSH WITH BASEBALL HISTORY* (Rowman & Littlefield 2020).

JACOB KORNHAUSER & DYLAN KORNHAUSER, *MAX GORDON: LIFE, LOSS, & BASEBALL'S GREATEST COMEBACK* (McFarland 2021).

JACOB KORNHAUSER

(815) 322-3914

jacob.kornhauser@duke.edu

2011 Magnolia Tree Lane

Durham, NC 27703

**UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW**

2023 SPRING TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Federal Habeas Corpus	Garrett, B.	4.1	2.00
State & Local Government	Miller, D.	4.0	3.00
Jury Decisionmaking	Bornstein, B.	4.0	2.00
Legal Ethics	Metzloff, T.	3.8	2.00
Administrative Law	Benjamin, S.	3.7	3.00
Corporate Diversity	Rosenblum, D.	<i>Credit Only</i>	1.00

2022 FALL TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Business Associations	Bloom Raskin, S.	4.2	4.00
Evidence	Garrett, B.	4.1	4.00
Criminal Procedure: Investigation	Grunwald, B.	3.5	3.00
Legal Writing: Craft & Style	Magat, J.	<i>Credit Only</i>	2.00
Cybercrime	Stansbury, S.	3.5	2.00

2022 SPRING TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Constitutional Law	Blocher, J.	4.0	4.50
Criminal Law	Beale, S.	4.0	4.50
Legal Analysis, Research, Writing	Baker, S.	4.0	4.00
Property	Wiener, J.	3.7	4.00

2021 FALL TERM

<u>COURSE TITLE</u>	<u>PROFESSOR</u>	<u>GRADE</u>	<u>CREDITS</u>
Civil Procedure	Miller, D.	3.5	4.50
Contracts	Haagen, P.	3.5	4.50
Torts	Coleman, D.	3.2	4.50
Legal Analysis, Research, Writing	Baker, S.	<i>Credit Only</i>	0.00

TOTAL CREDITS: 58.50
 CUMULATIVE GPA: **3.79**

University of Missouri – Columbia
Official Transcript

Date: 06/21/2020 Page: 1 of 2

Name: **Kornhauser, Jacob Alexander**
Student ID: 14178508
Date of Birth: 09/21/XXXX
Soc. Sec. Number: XXX-XX-5712

This transcript has been produced for:

JACOB ALEXANDER KORNHAUSER

Course Number	Course Title	Grade	Hours	Remarks
FALL 2014 Univ of MO-Col Ugrd				
Pre-Journalism, A&S				
Econom 1051H	General Economics-Honors	B	5.0	H,M
Geol 1100	Prncp of Geol W/Lab	B+	4.0	
Journ 2100H	News	A-	3.0	H,W
Psych 2510	Survey Abnormal Psychol	A	3.0	
GPA Hrs Att Hrs Ern Qual Pt GPA				
UGRD Term:	15.0	15.0	51.30	3.420
UGRD CUM:	39.0	46.0	146.40	3.754

SPNG 2015 Univ of MO-Col Ugrd				
Journalism-BJ				
Film S 1800	Intro to Film Studies	A	3.0	
Journ 2000	Cross-Cultural Journalism	A-	3.0	
Journ 2150	Multimedia Journalism	A-	3.0	
Pol Sc 1100	American Government	B+	3.0	
Psych 2110	Learning, Memory, & Cognition	A	3.0	
GPA Hrs Att Hrs Ern Qual Pt GPA				
UGRD Term:	15.0	15.0	56.10	3.740
UGRD CUM:	54.0	61.0	202.50	3.750

SUM 2015 Univ of MO-Col Ugrd				
Journalism-BJ				
Pol Sc 4150	The American Presidency	A	3.0	
Sociol 3600	Criminology	B	3.0	
GPA Hrs Att Hrs Ern Qual Pt GPA				
UGRD Term:	6.0	6.0	21.00	3.500
UGRD CUM:	60.0	67.0	223.50	3.725

FALL 2015 Univ of MO-Col Ugrd				
Journalism-BJ				
Hist 4000	Age of Jefferson	A	3.0	
Journ 3000	Hist of Am Journ	A-	3.0	
Journ 4000	Communications Law	A	3.0	
Journ 4300	Broadcast News 1	A-	3.0	
Psych 3870	Sleep & Sleep Disorders	A	3.0	
GPA Hrs Att Hrs Ern Qual Pt GPA				
UGRD Term:	15.0	15.0	58.20	3.880
UGRD CUM:	75.0	82.0	281.70	3.756

SPNG 2016 Univ of MO-Col Ugrd				
Journalism-BJ				
Cl Hum 3250	Greek and Roman Epic	A	3.0	
Journ 3510H	Think Global - Honors	A	3.0	H,W
Journ 4306	Broadcast News 2	A	3.0	
Psych 4540	Emot Disord Child/Adolsc	B-	3.0	
GPA Hrs Att Hrs Ern Qual Pt GPA				
UGRD Term:	12.0	12.0	44.10	3.675
UGRD CUM:	87.0	94.0	325.80	3.745

Course Number	Course Title	Grade	Hours	Remarks
---------------	--------------	-------	-------	---------

Degrees Awarded

University of Missouri - Columbia

Journalism-BJ

05-12-2017

Radio-Television
(Magna Cum Laude)

CERT - General Honors

05-12-2017

FALL 2013 Exam Credit

English 1000	Exposition & Argumentatn	CR	3.0	
Psych 1000	General Psychology	CR	3.0	

FALL 2013 Univ of MO-Col Ugrd

Pre-Journalism, A&S

English 1310	Intro to American Lit	A	3.0	
Hist 1200	Surv Am History Snc 1865	A+	3.0	
Math 1100	College Algebra	A+	3.0	
Sociol 1000	Intro to Sociology	A+	3.0	

GPA Hrs Att Hrs Ern Qual Pt GPA				
UGRD Term:	12.0	12.0	48.00	4.000
UGRD CUM:	12.0	18.0	48.00	4.000

SPNG 2014 Univ of MO-Col Ugrd

Pre-Journalism, A&S

Atm Sc 1050	Introductory Meteorology	A-	3.0	
Journ 1010	Career Expl in Journ	S	1.0	
Journ 1100	Prncs of Am Journ	A+	3.0	
Psych 3003H	Topics in Psych-Bhv Sci - Social Neuroscience	A	3.0	H
Stat 1200	Intro Statistical Reason	A	3.0	M

GPA Hrs Att Hrs Ern Qual Pt GPA				
UGRD Term:	12.0	13.0	47.10	3.925
UGRD CUM:	24.0	31.0	95.10	3.963

Becerra V. Helman

University Registrar

University of Missouri – Columbia
Official Transcript

Date: 06/21/2020 Page: 2 of 2

Name: **Kornhauser, Jacob Alexander**
Student ID: 14178508
Date of Birth: 09/21/XXXX
Soc. Sec. Number: XXX-XX-5712

Course Number	Course Title	Grade	Hours	Remarks
---------------	--------------	-------	-------	---------

This transcript has been produced for:
JACOB ALEXANDER KORNHAUSER

Course Number	Course Title	Grade	Hours	Remarks
---------------	--------------	-------	-------	---------

SUM 2016 Univ of MO-Col Ugrd
Journalism-BJ
Journ 4940 Internship in Journalism S 3.0
Rel St 3350 Monsters in W Relg & Folklore A+ 3.0

GPA	Hrs Att	Hrs Ern	Qual Pt	GPA
UGRD Term:	3.0	6.0	12.00	4.000
UGRD CUM:	90.0	100.0	337.80	3.753

FALL 2016 Univ of MO-Col Ugrd
Journalism-BJ
Ag_Ed_Ld 8250 Leadership Theory & Applicatn A 3.0
Journ 4308 Broadcast News 3 A 3.0 W
Journ 4814 Multimedia Sports A+ 3.0
Psych 4815H Cross-Cultural Psych A- 3.0 H
- Cross Cultural Psychology

GPA	Hrs Att	Hrs Ern	Qual Pt	GPA
UGRD Term:	12.0	12.0	47.10	3.925
UGRD CUM:	102.0	112.0	384.90	3.774

SPNG 2017 Univ of MO-Col Ugrd
Journalism-BJ
Journ 4310 News Producing A 1.0
Journ 4320 Adv Broadcast Reporting A+ 3.0 S
Journ 4422 Sports Journalism A 3.0
Journ 4974 Internet Appl F/Radio/TV A 3.0
Psych 2410H Developmental Psych - Hnrs A- 3.0 H

GPA	Hrs Att	Hrs Ern	Qual Pt	GPA
UGRD Term:	13.0	13.0	51.10	3.931
UGRD CUM:	115.0	125.0	436.00	3.791

Brenda V. Selman

University Registrar

University of Missouri-Columbia credit is expressed in semester hours.

Explanation of Remarks

E	= Law Experiential Learning
C	= Computer and Information Proficient
H	= General Honors
M	= A course including a substantial amount of mathematics reasoning
R	= Repeated course, grade not figured in CUM GPA (eff. Fall 2000)
S	= Service Learning
W	= A course requiring 5000 words of writing and revision
*	= An official change has been made to this record

Explanation of Grading System

A	= Outstanding
B	= Superior
C	= Adequate
CR	= Credit
D	= Marginal
E	= Exam
F	= Unacceptable
H	= Hearer or Auditor
HN	= Honors - Medicine only, beginning Fall 1997
I	= Incomplete
IP	= In Progress
LC	= Letter of Commendation - Medicine only, beginning Summer 1998
NR	= Not Reported
PR	= Preregistered
S	= Satisfactory
S*	= Satisfactory with Honors - Medicine only
T	= Non UM system transfer course
U	= Unsatisfactory
W	= Withdrew Passing
WF	= Withdrew Failing

The grade of D is not awarded to Graduate Students

Grade Point Values for Grading System

A = 4.00	D = 1.00
B = 3.00	F = 0.00
C = 2.00	WF = 0.00

Plus-Minus Grading Effective Fall 1995

A plus (+) sign following a letter grade adds an additional 0.33 grade points per credit hour. A minus (-) sign following a letter grade subtracts 0.33 per credit hour. Plus/Minus grade points apply to undergraduate students only.

Plus-Minus Grading Effective Fall 1998

A plus (+) sign following a letter grade adds an additional 0.3 grade points per credit hour, however no additional grade points are awarded for an A+. A minus (-) sign following a letter grade subtracts 0.3 per credit hour. Plus/Minus grade points apply to undergraduate students only.

Plus-Minus Grading Effective Fall 2011

Plus/Minus grade points apply to undergraduate and graduate students.

Law Numeric Grading System Effective Summer 2007

Important Note: Since 1987, the University of Missouri - Columbia has only used a numeric grading system. There are no definitive numeric grade to letter grade translations.

NOTE: To view the complete guide of transcript information go to <http://www.transcripts.missouri.edu>.

ADDRESS

University of Missouri-Columbia
Office of the University Registrar
125 Jesse Hall
Columbia MO 65211
573-882-4249

In April 2007, the School of Law converted from a 55-100 to a 65-100 grading scale. Grades are reflected on the 55-100 scale for Winter 2007 and all prior semesters. Grades are reflected on the 65-100 scale for Summer 2007 and all subsequent semesters. All cumulative GPAs were adjusted to the new scale by a one-time adjustment at the conclusion of the Winter 2007 semester.

NOTE: TO RECEIVE GRADUATE CREDIT IN ANY COURSE, THE STUDENT MUST HAVE BEEN ENROLLED IN GRADUATE SCHOOL OR AS A POST BACCALAUREATE SPECIAL. ALL COURSES TAKEN IN GRADUATE SCHOOL OR AS A POST BACCALAUREATE SPECIAL ARE GRADUATE LEVEL.

Course Numbering System Through Summer 2004

1	to 99	courses primarily for freshmen and sophomores
100	to 199	courses primarily for undergraduates: no graduate credit
200	to 299	courses for undergraduates, appropriate professional students, and for graduate students except those whose graduate major is in the department in which the course is offered.
300	to 399	courses for undergraduates, appropriate professional students, and for graduate students without restriction to major.
400	to 499	primarily for graduate students and appropriate professional students in special programs; undergraduates admitted only with the approval of the instructor of the course and the dean of the division in which the course is offered.
500	to 599	law, medicine or veterinary medicine courses

Course Numbering System Effective Fall 2004

0000	to 0999	skill development courses: courses that do not count towards degree requirement
1000	to 1999	freshman-level courses
2000	to 2999	sophomore-level courses
3000	to 3999	junior/senior level courses (upper division)
4000	to 4999	junior/senior level courses (upper division)
5000	to 6999	professional-level courses
7000	to 7999	beginning graduate courses
8000	to 8999	mid-level graduate courses
9000	to 9999	upper-level graduate courses

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without written consent of the student.

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Jacob Kornhauser

Dear Judge Walker:

It is my pleasure to write this letter recommending Jacob Kornhauser for a clerkship in your chambers. Jacob has done very well at Duke Law, earning grades that put him on track for high Latin honors at graduation. Perhaps even more importantly, he has honed his research and writing skills in a variety of ways—from working in broadcast journalism to serving as Research Editor of the *Duke Law Journal*. He will be a very, very strong clerk.

I was fortunate to have Jacob in my Constitutional Law course in the spring of 2022. Because the course covered a wide range of doctrinal rules in addition to interpretive theories and historical context, I had a chance to observe and learn a lot about the students' skills and interests.

Especially given the backdrop of transitioning back to in-person classes in the aftermath of the pandemic's height, I was especially attuned to student participation, and Jacob distinguished himself throughout the semester. He is not a "gunner"—he doesn't jump to volunteer an answer every single question asked—but essentially served as the class's safety valve. He was mostly likely to raise his hand when no one else would. In other words, he took on the hardest questions, and did it well. He also regularly visited office hours, which I personally enjoyed because it gave us a chance to talk in more depth about the doctrine and also just chat about sports and other areas of mutual interest. I remember at one point when we'd been discussing the Dormant Commerce Clause, Jacob noticed a news story about how Oregon's assisted suicide law required that a person be a resident of the state—a requirement that raises a host of interesting constitutional questions.

Unsurprisingly, Jacob aced my exam, earning a 4.0. Most of the exam was a standard "issue spotter" requiring students to identify the strongest legal claims and explain how they should be evaluated. Jacob excelled at this—which is saying a lot, because there were ten distinct issues to address!—but also at the essay, which required students to evaluate doctrinal design and development. Jacob chose to write about *Wickard v. Filburn* and the development of Commerce Clause doctrine, and turned in a masterful analysis.

Looking at his transcript now, I see that the 4.0 in my class was one of *three* he earned that semester, and that over the past three terms the *majority* of his grades have been 4.0 or better—including in demanding upper-level courses like Business Associations (4.2) and Evidence (4.1, which was the highest grade in that class). His overall GPA of 3.79 is very strong—in line with that of many other Duke students who've gone on to highly competitive federal clerkships—but actually undersells his accomplishments, since it is weighted down by his first semester, in which he earned an overall 3.4. That is still above Duke's required 3.3 median, but his GPA since then is closer to an extraordinary 3.9. At his current trajectory, he will likely graduate with high Latin honors; take away the first semester and he could well be right at the top of his class (though Duke Law does not officially rank its students).

I would especially emphasize Jacob's 4.0 in the legal research and writing course, given the centrality of those skills to a law clerk's job. Jacob takes justifiable pride in his legal writing, and is always looking to further improve it. He wrote two nonfiction books prior to law school, and worked at media companies like ESPN and Fox Sports, where he had to wade through mountains of information and make them digestible, often in high-pressure situations and under strict time constraints. Again, those professional skills make him especially well-equipped for clerking. In fact, I have personally benefitted from Jacob's editing and insight, since he is one of the editors working on an article I have forthcoming in the *Duke Law Journal*. His suggestions, both as to substance and style, have been fantastic.

Jacob has been a wonderful student at Duke, and I am confident that he will be a great law clerk as well. Please do not hesitate to contact me if you have any questions about him.

Sincerely,

Joseph Blocher
Lanty L. Smith '67 Professor of Law

Joseph Blocher - Blocher@law.duke.edu - (919) 613-7018

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 9, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Jacob Kornhauser

Dear Judge Walker:

I write to recommend Jacob Kornhauser, who has applied for a clerkship in your chambers. I do so with high enthusiasm.

Although Jacob has not yet been a student in one of my courses at Duke Law, I know him well from his extensive research assistant work for me during the summer and fall of 2022. As a first-year student, Jacob came to me to seek out the position based on his interest in my field of research, which is corporate and white-collar crime and government enforcement. I ended up delighted and lucky to have hired him.

Jacob is an academic performer of the highest rank, with outstanding legal skills. His grades have been impressively high across a variety of core, demanding courses, especially as he has progressed over his first two years at Duke.

As a research assistant, Jacob has been uniformly mature, industrious, and self-directed in solving problems. His work for me primarily involved two major projects. First, for a paper examining individual prosecutions in substantial scandals in the financial markets between 2010 and 2020, Jacob collected comprehensive data on over 100 criminal and civil enforcement actions in the United States and United Kingdom. He then organized that data into a beautiful set of appendices and tables. Peer readers of the resulting paper have noted the quality and usefulness of the data and its presentation. For this project, Jacob also provided invaluable assistance in expanding, editing, and cite-checking hundreds of complicated footnotes. I could not have managed these important aspects of this project without Jacob's contributions.

Second, Jacob captained the editing and production of the second edition of my textbook, *Corporate Crime: An Introduction to the Law and its Enforcement*. This is a two-volume text covering dozens of topics in the field. I have chosen to self-publish it in bound form through Amazon's platform and make it available free for download on my website, buelloncorporatecrime.com. The process of revising the manuscript each year, producing the final book through Amazon's process, and revising the website is time-consuming and technically complex. I count on having a proficient and agile research assistant to carry the project to completion. Jacob was excellent in this role, and I am proud of the final product, which could not have been realized without his guiding hand.

I have been particularly impressed during these projects by Jacob's professionalism and dispatch in communicating clearly and frequently about his progress, his understanding of tasks, and his expectations about completion. At times, I have had to urge him to slow down and not feel that he is expected always to turn things around without delay. Jacob's diligence is beyond question.

Having spent ten years in the federal courts before teaching, as a law clerk and as a prosecutor in several districts and circuits, and having taught and mentored thousands of law students, I am confident in predicting that Jacob Kornhauser would be an excellent hire for any judge with a demanding docket and a chambers that values professionalism and collaboration. I am happy to assist you further in any way with your evaluation of his application.

Sincerely yours,

Samuel W. Buell
Bernard M. Fishman Professor of Law

Sam Buell - buell@law.duke.edu - 919-613-7193

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 9, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Jacob Kornhauser

Dear Judge Walker:

I write to recommend Jacob Kornhauser for a judicial clerkship in your chambers. He has an extremely strong record at Duke Law. The curve at Duke Law is extremely demanding, and the grading more fine-grained than at other top law schools. Jacob is warm, collegial, a superlative writer, who relishes complex areas of legal doctrine, and has a deep commitment to public interest work. He would be such a delight in chambers; I recommend Jacob in the strongest possible terms.

I first came to know Jacob in my evidence course in fall 2022. Jacob wrote one of the best exams in the course, and received an "A+"-level 4.1 grade in a very competitive class, a grade that I have only awarded a handful of times in all of my years at Duke Law School. Jacob won the Dean's award for his work in the class. I was not surprised at this performance. Jacob asked excellent questions throughout the course and was easily one of the most engaged students in a quite large course. Jacob was clearly very engaged with specialized issues regarding scientific evidence and legal ethics during the course. This spring, Jacob was enrolled in my federal habeas corpus course. Jacob consistently, again, asked some of the most challenging questions and was an active participant. It was a small class, of just nine students, engaged with some of the most difficult statutory and judicial doctrines, and I had a chance to get to know each of the students extremely well. My appreciation for Jacob's depth as a legal thinker and problem solver only grew, as I saw him relish the challenges of unpacking habeas corpus doctrines.

I have also read and offered comments on Jacob's draft student note examining the implications of the Supreme Court's ruling in *Shinn v. Ramirez*. It is an extremely complex area, even within federal habeas doctrine. The piece is excellent, makes a very useful contribution, and I trust that the law review will publish it when it is submitted. Returning the favor, Jacob was the assigned editor to a law review article that I have co-authored with Joseph Blocher and that Duke Law Journal is publishing. Jacob's suggested edits on that manuscript were some of the most helpful that we received, from any readers.

Jacob has done a range of other impressive research and public interest work at Duke Law, ranging widely from his work on Duke Law Journal, summer work at Paul Hastings, to work in the Wrongful Convictions Clinic. Jacob is a fine writer; he was a teaching assistant in the legal writing program, has even published two nonfiction books on sports, relating to his work in sports journalism before law school. This wide-ranging experience has added a level of maturity to Jacob's work.

In short, Jacob is an academically gifted student, a quick study, a very strong writer, and a very warm and personable communicator. Jacob is balanced, collegial, creative, hardworking, and would be a great asset in chambers. Please feel free to contact me at (919) 613-7090 if you would like to discuss his application, and I thank you for considering it.

Very truly yours,

Brandon L. Garrett
L. Neil Williams, Jr. Professor of Law and
Director, Wilson Center for Science and Justice

Brandon Garrett - bgarrett@law.duke.edu - 919-613-7090

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 9, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Jacob Kornhauser

Dear Judge Walker:

I am writing to offer my highest recommendation for Jacob Kornhauser to serve as one of your law clerks. Jacob was a student in my legal writing course last year, a class which at Duke spans the entirety of the first year. This year, I've had the pleasure of working with Jacob as one of my two teaching assistants for the course.

The group of first year students I taught last year is the most outstanding group I have ever taught at Duke, and Jacob was the one of two students from that group that I chose to hire as a TA. That speaks to his writing skills, but it also reflects his personality.

Jacob has an interesting professional background that distinguishes him from other students. Before law school, he was a sports reporter, even publishing two books, both focusing on baseball. My experience teaching has been that students who work in some fashion before law school make better students and TAs, and this would also make him an excellent clerk. He is mature, seasoned, and persistent—all things that would be beneficial in a judge's chambers.

As one of my TAs this year, Jacob has been instrumental in acting as a mentor and teaching my students the Bluebook. The students respond very well to him and I have been impressed with his judgment and patience in interactions with them. As you are surely aware, first year law students can be a high-strung, challenging group with which to interact.

Jacob has all the intellectual skills needed to be an outstanding clerk, but he would also be a wonderful, collegial addition to chambers. His recent election to the position of Research Editor on Duke's law review further reflects this, as his fellow classmates chose him for this position which requires sensitivity and great attention to detail.

Please let me know if I can provide any further information in support of Jacob's application. He is an outstanding student and strong clerkship candidate.

Sincerely yours,

Sarah C. W. Baker
Clinical Professor of Law

Sarah Baker - baker@law.duke.edu - 919-613-7039

**NORTH CAROLINA INDUSTRIAL COMMISSION
I.C. FILE NUMBER: EC-00044**

IN THE MATTER OF CHARLES RAY FINCH

**REPLY BRIEF IN SUPPORT OF COMPENSATION FOR THE ESTATE OF CHARLES
RAY FINCH**

ARGUMENT

The arguments advanced in the State's response brief fail to establish the inability of Charles Ray Finch's estate to collect his § 148-82 statutory award. First, the § 28A-18-1 holding in *Estate of Jacobs v. State*, 775 S.E.2d 873 (2015), is not dicta, and even if it was, it still indicates a North Carolina appellate court would find Mr. Finch's claim survives to his estate. Second, § 148-82 *et seq.* and § 28A-18-1 can be harmonized because there is no conflict between them, and case law rejects classifying \$750,000 compensation as nugatory. Third, other state compensation programs containing their own survival provisions do not impute legislative intent onto § 148-82 *et seq.*, which does not contain such a provision. In sum, because the State's arguments do not support the assertion that Mr. Finch's estate is incapable of collecting his \$750,000 statutory award, this Commission should find that Mr. Finch's § 148-82 *et seq.* claim survives to his estate.

A. The *Jacobs* 28A-18-1 holding is not dicta, and, even if it was, it still indicates our State appellate court would find Mr. Finch’s claim survives to his estate.

The State argues we should ignore the *Jacobs* § 28A-18-1 holding as dicta, disregarding the fact that the case could not have been properly adjudicated without reaching that issue.¹ In *Jacobs*, the estates pursued two potential avenues for obtaining relief: (1) under § 148-82 *et seq.* directly; and (2) under § 28A-18-1 as survivors to the decedents’ claim. *Jacobs*, 775 S.E.2d at 874. The two avenues for relief operated as alternative arguments. They argued they could bring § 148-82 *et seq.* claims directly on the basis of a posthumous pardon and that, even if they could not, the claim would survive to them under § 28A-18-1. In other words, the *Jacobs* court was tasked with answering whether a posthumous pardon triggers a cause of action in an estate under § 148-82 *et seq.* and *also* whether a § 148-82 *et seq.* claim based on a posthumous pardon could survive to an estate under § 28A-18-1. They answered both questions in the negative, but for separate reasons – the answer to the § 148-82 *et seq.* argument did not answer or render the argument under § 28A-18-1 moot.

The *Jacobs* court first held that testamentary estates are not a “person” or “claimant,” and thus, do not qualify for § 148-82 *et seq.* relief based on a posthumous pardon. *Id.* at 876–77. Put another way: the issuance of a posthumous pardon does not trigger a cause of action in an estate itself because it is not a “person” or “claimant.” With that, the *Jacobs* court turned to the estates’ second argument – that, if they could not bring the cause of action on their own, the claim survived under § 28A-18-1. *Id.* at 877. Again, the court disagreed, recognizing that a claim under § 148-82 *et seq.* only accrues upon the issuance of a pardon of innocence, and thus, a posthumous pardon

¹ The *Jacobs* court itself makes clear at the outset that, the Full Commission made three findings when it denied the estates’ claim, including that “because claims under section 148–82 *et seq.* accrue by the issuance of a pardon of innocence, and [none of the decedents] received a pardon of innocence prior to their respective deaths, no claims for remuneration survived to their personal representatives under . . . § 28A-18-1.” 775 S.E.2d at 874. As discussed below, this confirms that the § 28A-18-1 inquiry was a separate and necessary aspect of the *Jacobs* appellate decision.

would not enable the claim to survive because it did not accrue during the decedent’s lifetime.² *Id.* Both holdings were essential to adjudicating the estates’ claim. The first holding said that testamentary estates could not bring § 148-82 *et seq.* claims as a “person” or “claimant” in the first instance while the second holding said that, on the basis of a posthumous pardon, the estates also could not bring such claims under § 28A-18-1 because the overarching claim never accrued. In isolation, neither holding fully determined whether the estates had a path to obtaining statutory relief under § 148-82 *et seq.* for a posthumous pardon. But, together, the holdings established that when pursuing a claim based on a posthumous pardon, an estate both may not bring a § 148-82 *et seq.* claim directly in the first instance *and* that, because the claim never accrued, § 28A-18-1 is also not an available avenue in obtaining statutory relief.

Even if this Commission finds the *Jacobs* § 28A-18-1 holding is dicta, the opinion is still useful because it provides insight into how our appellate court would adjudicate the instant dispute. As the State aptly observes in its brief, the analysis in *Jacobs* “seems to insinuate that had an individual been eligible to receive compensation under the Act prior to his or her passing, as is the case here, then the petition would survive to his or her estate[.]” State’s Response Brief at 7–8. Precisely. To avoid this inconvenient reality, the State argues that to hold accordingly would betray the internal logic of the opinion that a testamentary estate cannot be a “person” or “claimant” under 148-82 *et seq.* But the finding that a testamentary estate cannot be a “person” or “claimant” under

² The *Jacobs* court makes clear that the timing of § 148-82 *et seq.* accrual, not final Commission adjudication, is important to the survival of a claim. In characterizing the background facts, the court’s description of the six living members of the Wilmington Ten is enlightening. The court notes that the six members of the Wilmington Ten “who were alive *when their petitions were filed*” were fully compensated, as opposed to characterizing them as the six members “who were alive *when their cases were adjudicated*.” 775 S.E.2d at 874 (emphasis added). That is because their claims had already accrued by issuance of an *inter vivos* pardon of innocence, something the *Jacobs* court recognized. *See id.* (detailing the *Jacobs* Full Commission’s conclusion that § 148-82 *et seq.* claims accrue upon issuance of a pardon of innocence). Thus, the *Jacobs* court established that whether someone was alive *when a pardon of innocence was issued* is the determinative factor in such disputes, not whether someone was alive when the Commission reviewed their claim.

§ 148-82 *et seq.* was in the context of a decedent who was posthumously pardoned, not one, as here, who was pardoned and petitioned for compensation *inter vivos*. Mr. Finch was the “person” and “claimant” of this claim during his lifetime and, as detailed in the Estate’s Brief in this case, under the plain language of § 28A-18-1, and as indicated by the *Jacobs*’ opinion, when a plaintiff is pardoned and petitions for compensation *inter vivos*, the claim survives to the decedent’s estate.

B. Harrell v. Bowen is irrelevant to the case at bar, and the State fails to cite a single case where a plaintiff’s monetary compensation is considered nugatory.

The State repackages and duplicates its “nugatory” argument in its discussion of *Harrell v. Bowen*, 655 S.E.2d 350 (N.C. 2008), an inapplicable case that the State concedes is “not on point with the instant conundrum.” State’s Response Brief at 10. Yet, undeterred, the State still relies on *Harrell* to assert three propositions: (1) even when demands and claims accrue, not all of them survive to the estate under § 28A-18-1; (2) § 28A-18-1(b) is not an exclusive list of claims which do not survive; and (3) the overarching statute controls over § 28A-18-1 when there is an implicit conflict between the two. Each proposition is flawed in its reliance on *Harrell*. The case at bar is not analogous to *Harrell* and the State strains and stretches to try and make it applicable.

First, we already know that not all claims which accrue prior to death survive to the decedent’s estate. Section 28A-18-1(b) explicitly provides that causes of action for: (1) libel or slander (except slander of title); (2) false imprisonment; and (3) where the relief sought could not be enjoyed, or granting it would be nugatory, all do not survive. Mr. Finch’s estate has never asserted that *all* claims survive to the decedent’s estate under § 28A-18-1, just that *this* claim does.

Second, *Harrell* does not tell us that § 28A-18-1(b) is not an exclusive list. In fact, *Harrell* does not tell us a single thing about the § 28A-18-1(b) exceptions because those exceptions only apply to claims *in favor of* a decedent. Of course, in *Harrell*, the claim is *against* a decedent. Thus, *Harrell* does not in any way indicate that there are types of claims beyond the scope of § 28A-18-

1(b) which would apply to this case and keep Mr. Finch's estate from collecting his statutory award. All the *Harrell* court held was that § 28A-18-1 does not apply to punitive damages applied against a decedent. 655 S.E.2d at 353. The court found that the legislative intent in N.C.G.S. § 1D-1, the punitive damages statute, was to deter "egregiously wrongful acts" of the defendant and others and because a deceased defendant cannot be deterred from committing wrongful acts, the court held an estate could not be liable for punitive damages. *Id.* Accordingly, although the holding in *Harrell* is still not directly applicable (because § 28A-18-1(b) exceptions apply only to claims *in favor of* a decedent), the court's opinion fits logically within the § 28A-18-1(b)(3) nugatory exception — when the point of adjudication, relief, or deterrence is rendered moot by death, such as where punitive damages cannot deter someone who is dead, the court is not going to allow survival under § 28A-18-1.

Third, whether an overarching statute controls when in conflict with § 28A-18-1 is irrelevant here because § 148-82 *et seq.* and § 28A-18-1 are not in conflict. The *Harrell* court concluded that because § 1D-1 specifically says that it "prevails over any other law to the contrary," the plaintiffs could not sue the estate for punitive damages under § 28A-18-1. *Id.* The court's opinion adds nothing to this case where there are no claims for punitive damages and where the overarching statute, § 148-82 *et seq.*, contains no provisions indicating that it would "prevail" over § 28A-18-1.

The State also argues – without any case law support – that even if Mr. Finch's § 148-82 *et seq.* claim survived to his estate under § 28A-18-1, the \$750,000 compensation would be nugatory. Its only attempt at bolstering this unsupportable position is the feeble assertion that Mr. Finch's estate "assumes that an action can never be 'nugatory' solely based on the fact that there is money at stake." State's Response Brief at 12. Mr. Finch's estate knows better than to assume.

The estate is well aware that some actions may be nugatory, as it acknowledged at oral argument and in its opening brief. But based on a thorough review of North Carolina court precedent, the estate asserts that the present claim for \$750,000 compensation for wrongful incarceration is not nugatory because it is unquestionably most akin to the claims which North Carolina courts have found survive against the nugatory exception. *See* Estate’s Brief, Section B at 6–8 (comparing *Elmore v. Elmore*, 313 S.E.2d 904 (N.C. App. 1984) and *In Re Higgins*, 587 S.E.2d 77 (N.C. App. 2003) with *Schronce v. Coniglio*, 476 S.E.2d 366 (N.C. App. 1996) and *McGowen v. Rental Tool Co.*, 428 S.E.2d 275 (N.C. App. 1993)). The State cannot and does not cite a single case which says that the estate of a decedent entitled to monetary compensation may not collect said compensation because it is nugatory.

C. Specific survival provisions within the State’s cited compensation programs are not surplusage in light of § 28A-18-1 and are different in kind from § 148-82 *et seq.*

The State’s reliance on the Childhood Vaccine-Related Injury Compensation Program (“Vaccine Program”) and the 2013-15 Eugenics Asexualization and Sterilization Compensation Program (“Eugenics Program”) is misplaced, as the underlying purpose of each of those compensation programs is fundamentally distinct from 148-82 *et seq.* Because those programs contain their own survival provisions, the argument goes, applying § 28A-18-1 to them would be surplusage. Accordingly, the State asserts that § 28A-18-1 must not apply to any compensation program, regardless of the context of any particular program. But context is key. And the State ignores that, unlike here, both of the cited statutory frameworks necessarily had to account for the likelihood of death, so much so that it made sense for the legislature to include survival provisions within the text of statutes.

It makes sense why each of the State’s two cited programs would include a survival provision. The Vaccine Program specifies that “in the case of a decedent, the claim may be filed

by an administrator, executor, or other legal representative.” N.C.G.S. § 130A-422(1). This rule prevents a statutory gap if § 28A-18-1 was the only way to pursue the claim. Notably, a vaccine-related death is one explicit trigger to the cause of action under the statute. N.C.G.S. § 130A-423(b1) (stating a claimant must first file a civil suit for damages arising from vaccine related injury or death). Therefore, without § 130A-422(1), children whose death was vaccine related would have no remedy because the cause of action would not have accrued during their lifetime and § 28A-18-1 would be inapplicable. As death itself can create the cause of action, survival rules beyond § 28A-18-1 are necessary under the statute to ensure relief in cases where other survival statutes would not be helpful. Far from surplusage, the additional language in § 130A-422(1) was required – death was explicitly contemplated by the Vaccine Program framework, so the additional language was necessary to ensure there was no gap in the statutory framework whereby children who suffer non-fatal vaccine-related injuries have a cause of action while those who die a vaccine-related death do not.

The Eugenics Program further refutes the State’s surplusage argument. The Eugenics Program provided that “any payment shall be made to the estate of the decedent” for claimants who die “during the pendency of a claim, or after being determined to be a qualified recipient[.]” N.C.G.S. § 143B-426.51(b) (expired June 30, 2015). Again, the Eugenics Program is undoubtedly distinct from § 148-82 *et seq.* The Eugenics Program was a two-year, time-limited program whereby individuals alive on June 30, 2013 who were forcibly sterilized under the North Carolina Eugenics Board Program could petition for compensation. *See* §§ 143B-426.50(1), 143B-426.51(a) (collectively providing the program was to run from June 30, 2013 to June 30, 2015). The first payment was approximately a \$20,000 lump sum and the second payment was for \$10

million divided by the total number of recipients.³ The vast majority of those forcibly sterilized under the Eugenics Program were sterilized prior to July 1960, so the victims still alive on June 30, 2013 – at least 53 years later – were necessarily exclusively elderly individuals.⁴ And the Eugenics Program provided a fixed two-year window in which victims were permitted to bring claims. This context, noticeably absent from the State’s briefing, explains *why* the legislature had reason to believe that at least some claimants would likely die during the pendency of their claims. Therefore, it was prudent to include a survival provision to streamline claims under a time-limited program – circumstances not shared by § 148-82 *et seq.*

The legislature enacting § 148-82 *et seq.* simply had no reason to have considered the likelihood of death because, unlike the Eugenics Program, they did not anticipate a significant volume – or potentially any – instances where death would complicate claims under this statutory scheme. In fact, to date, § 148-82 *et seq.* has rarely needed to rely on a survival mechanism. The State has granted a Pardon of Innocence to 34 individuals, including Mr. Finch, and only four – the four members of the Wilmington Ten referenced in *Jacobs* — have been pardoned posthumously.⁵ Excluding Mr. Finch, the average age of a living North Carolina exoneree when receiving a Pardon

³ The second payment came out to roughly \$15,000 per qualified recipient. Press Release, *Senate Passes Bipartisan Bill to Assist Eugenics Victims Receiving Compensation Payments*, Thom Tillis (Dec. 1, 2015), <https://www.tillis.senate.gov/2015/12/senate-passes-bipartisan-bill-to-assist-eugenics-victims-receiving-compensation-payments>.

⁴ Approximately 5,521 of an estimated 7,528 people forcibly sterilized under the state’s Eugenics Program were sterilized prior to July 1960. See Governor’s Task Force, *The Governor’s Task Force to Determine the Method of Compensation for Victims of North Carolina’s Eugenics Board: Final Report to the Governor of North Carolina*, at 6 (Jan. 27, 2012), <https://web.archive.org/web/20120314083006/http://www.sterilizationvictims.nc.gov/documents/FinalReport-GovernorsEugenicsCompensationTaskForce.pdf>.

⁵ See The National Registry of Exonerations, *North Carolina Exonerees*, University of California-Irvine Newkirk Center for Science & Society, University of Michigan Law School, and Michigan State University College of Law (Last accessed August 2, 2022) (showing all North Carolina exonerees and providing biographical and Pardon information for each), <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View=%7BF6AF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7%7D&FilterField1=ST&FilterValue1=NC>.

of Innocence is 48 years old.⁶ So, unlike in the Eugenics Program, there was no reason for the legislature to believe large numbers of pardon recipients would die before their § 148-82 *et seq.* claims could be adjudicated. In practice, only four posthumous pardons have been issued, and likely only because the decedents were pardoned as part of a larger group that included six living members. Of course, Mr. Finch is the only North Carolina pardon recipient to be pardoned *inter vivos* and die between his pardon and the adjudication of his § 148-82 *et seq.* claim.⁷

Simply put: Mr. Finch is an outlier. Section 28A-18-1 is a catch-all survival statute designed for such an outlier. The legislature surely considered the catch-all statute when deliberately drafting §148-82 *et seq.* without a specific survival statute; concluding that the catch-all would cover the unlikely scenario that a claimant die with a pending claim. The State attempts to improperly impute the very opposite legislative intent onto § 148-82 *et seq.* by comparing it to incomparable compensation programs. Its other cited programs had uniquely justifiable reasons to include survival provisions under the almost certain reality that some of the claimants under those programs would die before pursuing their claims. But that rationale is completely inapplicable to §148-82 *et seq.* because of the relative unlikelihood of death. Thus, when interpreting § 148-82 *et seq.*, using § 28A-18-1 as a survival mechanism is not surplusage. Indeed, the survival statute exists for just such a scenario: providing that claims which accrued prior to death survive to the decedent's estate when the relevant statute is silent on the matter.

⁶ *Id.*

⁷ *Id.*

CONCLUSION

For the reasons advanced in the Estate's Brief and because the State's Response Brief fails to support a contrary conclusion, this Commission should find that Mr. Finch's estate may collect his § 148-82 *et seq.* award pursuant to § 28-18-1(a).

Applicant Details

First Name **Noah**
 Last Name **Kostick**
 Citizenship Status **U. S. Citizen**
 Email Address Nkostick33@law.gwu.edu
 Address

Address
Street
1800 N Lynn St Apt #1405
City
Arlington
State/Territory
Virginia
Zip
22209
Country
United States

Contact Phone Number **9048814648**

Applicant Education

BA/BS From **Baldwin-Wallace College**
 Date of BA/BS **May 2021**
 JD/LLB From **The George Washington University Law School**
<https://www.law.gwu.edu/>
 Date of JD/LLB **May 19, 2024**
 Class Rank **20%**
 Law Review/Journal **Yes**
 Journal(s) **International Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **First Year Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/
 Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Trangsrud, Roger
rtrang@law.gwu.edu
(703) 534-3119
Lerner, Carolyn
Lerner_Chambers@cfc.uscourts.gov
Grillot, Ben
bgrillot@law.gwu.edu
2023203872

This applicant has certified that all data entered in this profile and any application documents are true and correct.

NOAH KOSTICK

Nkostick33@law.gwu.edu ▪ 904.881.4648 ▪ 1800 N Lynn St Apt #1405 Arlington, VA 22209

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a law student at The George Washington University Law School and will be graduating in May 2024. I am writing to apply for a judicial clerkship with you for the 2024–2025 term. I am currently an editor on The George Washington International Law Review and research complex litigation for Professor Roger Trangsrud. In the fall of 2022, I externed for Judge Carolyn N. Lerner where I researched and wrote memoranda, drafted orders, and helped edit opinions. That experience inspired me to pursue a judicial clerkship.

I am particularly interested in your chambers because I currently live in Virginia. Enclosed is my resume, law school transcript, and writing sample. I have also requested recommendations from Judge Carolyn N. Lerner, Professor Roger Trangsrud, and Professor Ben Grillot.

Respectfully,

Noah Kostick

NOAH KOSTICK

Nkostick33@law.gwu.edu ▪ 904.881.4648 ▪ 1800 N Lynn St Apt #1405 Arlington, VA 22209

EDUCATION

The George Washington University Law School

GPA: 3.648 Thurgood Marshall Scholar (Top 35% of class, as of Spring 2023)

Activities: Writing Fellow, George Washington International Law Review

Washington, DC

J.D. Expected May 2024

Baldwin Wallace University

Bachelor of Arts, *cum laude*, in Business Administration and Industrial & Organizational Psychology

Leadership: Senior Class President, Alpha Sigma Phi President, Rotaract Vice President, Interfraternity Council

Co-Director of Development, Junior Class President, Sophomore Class Treasurer, Radcliffe Leadership Fellow

Berea, OH

May 2021

PROFESSIONAL EXPERIENCE

MANATT, PHELPS & PHILLIPS, LLP

Incoming Summer Associate

Washington, DC

Summer 2023

PROFESSOR ROGER TRANGSRUD

Graduate Research Assistant

Washington, DC

September 2022 – Current

- Completed various research assignments regarding the MDL panel, divisive mergers in bankruptcy (“Texas Two-Step”), third-party litigation financing, judicial review of inventory settlements, and mass arbitrations
- Assisted in planning conferences on complex litigation, bankruptcy, and the MDL panel for federal judges and leading plaintiffs and defense attorneys

THE HONORABLE CAROLYN N. LERNER, U.S. COURT OF FEDERAL CLAIMS

Fall Extern

Washington, DC

September 2022 – November 2022

- Synthesized relevant law on a motion for reconsideration involving a *qui tam* realtor suit
- Researched and drafted memorandum on Special Masters’ use of the *Daubert* factors to determine the credibility of expert testimony for a Vaccine Act appeal
- Summarized the factual background in a military pay appeal involving a retired fighter pilot
- Participated in table reads, provided citation and substantiation checks, and performed other clerk-like duties as assigned

POTOMAC LEGAL GROUP

Law Clerk

Washington, DC

May 2022 – August 2022

- Drafted a settlement negotiations response to opposing counsel detailing weaknesses in the opposing parties case law regarding the interactive requirement mandated by the ADA in a failure to accommodate claim
- Researched state and federal discrimination laws to write several memorandums for cases in federal court, state court, an EEOC mediation, and an arbitration
- Wrote memorandums analyzing the strengths of breach of contract and unpaid wages claims in D.C. and Virginia
- Collaborated with other law clerks to write a memorandum on the discriminatory effect of artificial intelligence in recruitment, hiring, and promotion of employees
- Drafted the initial discovery disclosure for a case before the U.S. District Court for the District of Columbia
- Assisted in preparing a client for an EEOC mediation, including drafting counsel’s opening statement

NATIONAL SAFETY APPAREL

Human Resource Intern

Cleveland, OH

May 2021 – August 2021

- Reviewed Illinois marijuana laws and recommended changes to the Chicago office’s drug testing policy
- Created a background check policy and interviewed potential background check companies
- Researched best practices and designed a calendar policy to assist in a new hybrid work schedule
- Reviewed supplier contracts for the acquisition of a new glove brand

INTERESTS

Ice hockey (played in the EHL for the NY Apple Core after high school), golf, tennis, and chess

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

Gwid : G36772370

Date of Birth: 10-JUN

Date Issued: 07-JUN-2023

Record of: Noah Kostick

Page: 1

Student Level: Law

Issued To: NOAH KOSTICK

REFNUM:5853261

Admit Term: Fall 2021

NKOSTICK33@LAW.GWU.EDU

Current College(s): Law School

Current Major(s): Law

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
---------	--------------	------	-----	-----

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2021

Law School

Law

LAW 6202	Contracts	4.00	A	
LAW 6206	Morant Torts	4.00	A	
LAW 6212	Suter Civil Procedure	4.00	A	
LAW 6216	Trangsrud Fundamentals Of Lawyering I	3.00	A-	
	Grillot			
Ehrs	15.00 GPA-Hrs	15.00	GPA	3.933
CUM	15.00 GPA-Hrs	15.00	GPA	3.933
GEORGE WASHINGTON SCHOLAR				
TOP 1% - 15% OF THE CLASS TO DATE				

Spring 2022

Law School

Law

LAW 6208	Property	4.00	A-	
LAW 6209	Roberts Legislation And Regulation	3.00	B	
LAW 6210	Smith Criminal Law	3.00	B+	
LAW 6214	Cottrol Constitutional Law I	3.00	B+	
LAW 6217	Pontana Fundamentals Of Lawyering II	3.00	A-	
	Grillot			
Ehrs	16.00 GPA-Hrs	16.00	GPA	3.417
CUM	31.00 GPA-Hrs	31.00	GPA	3.667
Good Standing				
GEORGE WASHINGTON SCHOLAR				
TOP 1% - 15% OF THE CLASS TO DATE				

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
---------	--------------	------	-----	-----

Fall 2022

Law School

Law

LAW 6380	Constitutional Law II	3.00	A	
LAW 6400	Pontana Administrative Law	3.00	A-	
LAW 6666	Glicksman Research And Writing	2.00	CR	
LAW 6668	Fellow Blinkova Field Placement	1.00	CR	
LAW 6669	McCooy Judicial Lawyering	2.00	B+	
LAW 6683	Iscoe College Of Trial Advocacy	3.00	A	
	Salzburg			
Ehrs	14.00 GPA-Hrs	11.00	GPA	3.788
CUM	45.00 GPA-Hrs	42.00	GPA	3.698
Good Standing				
GEORGE WASHINGTON SCHOLAR				
TOP 1% - 15% OF THE CLASS TO DATE				

Spring 2023

LAW 6230	Evidence	4.00	A-	
LAW 6236	Complex Litigation	3.00	B+	
LAW 6360	Criminal Procedure	4.00	B+	
LAW 6666	Research And Writing	2.00	CR	
	Fellow			
Ehrs	13.00 GPA-Hrs	11.00	GPA	3.455
CUM	58.00 GPA-Hrs	53.00	GPA	3.648
Good Standing				
THURGOOD MARSHALL SCHOLAR				
TOP 16% - 35% OF THE CLASS TO DATE				

Fall 2022

Law School

Law

LAW 6657	Int'L Law Review Note	1.00	-----	
	Credits In Progress:	1.00		

Spring 2023

LAW 6657	Int'L Law Review Note	1.00	-----	
	Credits In Progress:	1.00		

***** CONTINUED ON PAGE 2 *****



Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, DC

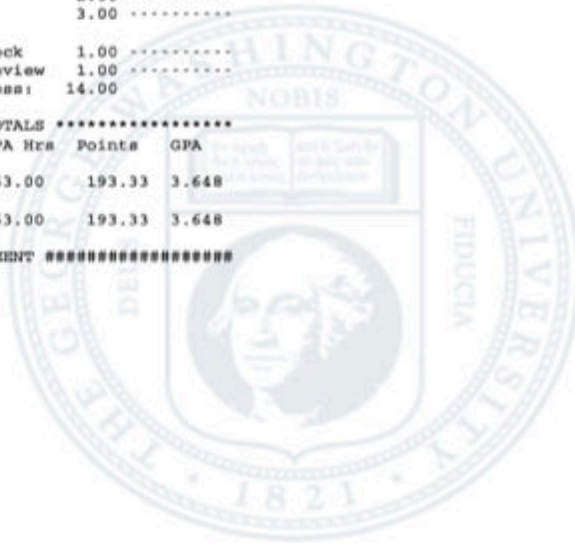
OFFICE OF THE REGISTRAR

GWid : G36772370
Date of Birth: 10-JUN
Record of: Noah Kostick

Date Issued: 07-JUN-2023

Page: 2

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
Fall 2023				
LAW 6218	Prof Responsibility & Ethics	2.00	-----	
LAW 6250	Corporations	4.00	-----	
LAW 6351	Reading Group	1.00	-----	
LAW 6387	Voting Rights	2.00	-----	
LAW 6393	First Amendment - Religion	3.00	-----	
LAW 6644	Moot Court - Van Vleck	1.00	-----	
LAW 6659	International Law Review	1.00	-----	
	Credits In Progress:	14.00		
***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	58.00	53.00	193.33	3.648
OVERALL	58.00	53.00	193.33	3.648
***** END OF DOCUMENT *****				



June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Noah Kostick as an outstanding candidate for a clerkship with your Honor.

Noah was my student in a small section of Civil Procedure in the Fall of 2021 and is a student this semester in my Complex Litigation class. He has consistently impressed me as someone who is exceptionally well prepared and someone who could always be counted on to give thoughtful and insightful responses to challenging questions. I thus was not surprised when he earned one of the top grades I awarded in Civil Procedure. His academic record to date at GW is one of the strongest I have ever seen with A's in the majority of courses he has taken. Noah must rank near the top of his class as is reflected in his standing as a George Washington Scholar.

When the time came for me to hire a research assistant last fall, I was thrilled that Noah applied and my decision to hire him was one of the easiest I have ever had. As my research assistant I have had the opportunity to work with him closely on a wide range of issues in complex litigation such as whether transferee judges in MDL litigation have and should have the power to review aggregate settlements for fairness and conflicts of interest. Judges have such authority in class actions, but it is not clear they do or should have such powers in mass consolidations. Noah's work on other topics such as the availability of monetary relief in Title VII class actions after the Walmart decision has also been excellent. Other challenging topics he has assisted me with include third party litigation finance, divisive mergers to manage mass tort claims, and whether class actions should be allowed in arbitration.

Noah has successfully served as a judicial intern for Judge Lerner of the Court of Federal Claims, as a Law Clerk for the Potomac Legal Group, and this summer will gain additional experience in legal research and writing at Manatt, Phelps, & Phillips.

I suspect the reason for Noah's stellar success in everything he has attempted in law school follows from his work habits, his self-discipline, and his remarkable intelligence. On a personal level he is a delight to interact with in every way. He is dedicated and ambitious. I would be shocked if he did not prove to be one of your finest clerks. He certainly promises to be a fine lawyer. I urge you to give his application your most careful consideration.

If you should have any additional questions, please feel free to contact me by phone, by letter, or by email.

Kind regards.

Very truly yours,

Roger H. Trangsrud
James F. Humphreys Professor of Complex Litigation and Civil Procedure
The George Washington University
(202) 994-6182
rtrang@law.gwu.edu

Roger Trangsrud - rtrang@law.gwu.edu - (703) 534-3119

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Noah Kostick applied for a law clerk position in your chambers and requested that I support his application. I am pleased to do so. Noah was one of my interns for a semester during his second year. Under my law clerks' supervision, interns are expected to draft orders and memoranda on complex legal issues. While I do not directly supervise interns, my clerks work with them closely. By all accounts, Noah exceeded expectations. Noah also stood out to me for his good humor, research skills, and work ethic.

Without having taken evidence, Noah researched (and simplified) a complicated area of evidence law. In this case, one of my clerks grappled with how to apply the Daubert factors in a Vaccine Act claim where the special master serves as both judge and factfinder. This area of evidence law is challenging. Noah volunteered to work over the weekend to produce a highly useful memo for my law clerk, and nearly all of his research made it into the final opinion. It is rare to find interns who are eager to both tackle challenges and have the capability to add real value to our work.

Part of Noah's work ethic and teamwork likely comes from his time as a semi-professional hockey player. For instance, Noah was assigned to draft an order dismissing a prolific filer's motion for reconsideration. When he noticed that his co-intern had a lighter workload, he enlisted her to help him on some of the thornier legal issues—e.g., how is 'manifest injustice' defined in Federal Claims case law, and how do Rules 59(a) and 60 interact. Noah turned an individual assignment into a group effort and, as a result, produced a highly professional draft for a second-year law student. Noah's collaborative approach would likely be an asset to your chambers.

On paper, Noah checks many of the boxes for a clerkship: impressive transcript, journal experience, judicial internship, etc. Noah also has the personal qualities that are essential for success in chambers. My clerks genuinely enjoyed his presence and came to rely on his advanced research skills. I believe he would make a great clerk and hope you will closely consider his application.

Sincerely,

Judge Carolyn N. Lerner

Court of Federal Claims

Carolyn Lerner - Lerner_Chambers@cfc.uscourts.gov

Benjamin Grillot
3445 Clay Street NE
Washington, DC 20019
202-320-3872
bgrillot@law.gwu.edu

February 22, 2023

To Whom It May Concern:

I am an adjunct professor at the George Washington University Law School and had Noah Kostick as a student in my Fundamentals of Lawyering course for the 2021-2022 academic year.

Mr. Kostick is, quite simply, an outstanding student and will make an excellent attorney one day. He works hard, asks insightful questions, and is always willing to participate in class. He is an excellent writer and I am proud to say that he finished the year as one of my top students.

However, perhaps most importantly, Mr. Kostick brings a poise and maturity to law school that will serve him well in his career. He has a kind sense of confidence that is rare in first year law students. He is a natural leader, a creative thinker, and brought a positive outlook to every challenge he tackled.

After finishing my class Noah worked as Writing Fellow for the 2022-2023 academic year, providing feedback on writing for current first year students. Many of my current students have told me that their writing significantly improved with Noah's assistance.

I highly recommend Noah for a clerkship in your chambers. Noah is the rare student with a strong combination of analytical skills and people skills.

Please do not hesitate to contact me if you have any questions or would like any additional information. I rarely recommend anyone as highly as I recommend Noah for this position.

Sincerely,

/s/

Benjamin J. Grillot

Professorial Lecturer in Law
Legal Research and Writing Program
The George Washington University School of Law

NOAH KOSTICK

Nkostick33@law.gwu.edu ▪ 904.881.4648 ▪ 1800 N Lynn St Apt #1405 Arlington, VA 22209

The following memorandum was written during my time as a judicial extern for the Honorable Carolyn N. Lerner at The United States Court of Federal Claims. This memorandum analyzed a repeat litigant's motion for reconsideration and request for leave to file notice of a motion to add a third-party intervenor. Much of the research from this memorandum and some of the language was used in the final order. This memorandum includes only my own research and writing with no edits from Judge Lerner or her clerks. Furthermore, Judge Lerner approved my use of this memorandum as a writing sample.

To: Judge Lerner
From: Noah Kostick
Date: 10.20.2022
Re: [REDACTED] motion for reconsideration and motion for leave to file notice of motion to add third-party intervenor

MEMORANDUM

Plaintiff's motion for reconsideration and motion for leave to file notice of motion to add third-party intervenor should be denied for the following reasons.

I. Background

Plaintiff's claims arise from a settlement agreement between the United States and his former employer, Amgen. July 13, 2022 Opinion and Order ("Op.") at 1, ECF No. 30. In 2010, Plaintiff filed a *qui tam* complaint alleging that Amgen violated the False Claims Act ("FCA"). *Id.* Ultimately, his case was dismissed. *Id.* Soon after the dismissal, Amgen and the United States reached a multimillion-dollar settlement stemming from several similar *qui tam* complaints to which Mr. [REDACTED] was not a party. *Id.* at 1–2.

Since his initial suit, Plaintiff has a long history of litigating this matter. Plaintiff has sought relief from numerous forums, including private arbitration, the Equal Employment Opportunity Commission, state and federal trial courts in both Colorado and California, the Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States. *See* Op. None have ruled for the Plaintiff. *Id.*

On June 15, 2021, Plaintiff filed a complaint in the Court of Federal Claims. Subsequently, on July 13, 2022, this Court dismissed Plaintiff's case for lack of jurisdiction. *See* Op. (dismissing Plaintiff's contract and Fifth Amendment claims because the statute of limitations lapsed; dismissing Plaintiff's *qui tam* claims because the Court of Federal Claims lacks jurisdiction over *qui tam* suits; dismissing Plaintiff's contract claims for lack of standing;

dismissing Plaintiff's First and Fourteenth Amendment claims for lack of subject matter jurisdiction over federal civil rights violations).

Plaintiff now moves that this Court reconsider. *See* Pl.'s Mot. for Recon. His primary reason for reconsideration sounds in *qui tam*. *Id.* at 1–2. Namely, a prior court has already implied, Mr. [REDACTED] argues, that he was an original relator. *Id.* Thus, Mr. [REDACTED] claims, this Court committed a mistake-in-fact when it determined that he was not a proper *qui tam* relator. *Id.* In addition, Plaintiff claims that this Court mistakenly labeled his contract claim as implied-in-law when it was an implied-in-fact contract claim. *Id.* Finally, Plaintiff asks this courts to review the decision made in other District and Circuit courts. *Id.* at 6–7.

Plaintiff also requests leave to file notice of motion to add third party intervenor, Amgen Inc. *See* Pl.'s Mot. for Leave. Chiefly, Plaintiff argues that Amgen's five-year Corporate Integrity Agreement is relevant to his statute of limitations defense in his concurrent motion for reconsideration. *Id.* Further, that joining Amgen to this litigation will prevent future "piece-mail" litigation. *Id.*

II. Legal Standards & Analysis

Plaintiff makes two motions. First, a motion to reconsider under RCFC 59(a) and 60(b). Second, a request for leave under RCFC 14(b) to file notice of motion to add a third-party intervenor.

A. Motion for Reconsideration

In Plaintiff's motion, he argues for reconsideration under both (1) RCFC 59(a) and (2) RCFC 60.

1. RCFC 59(a)

Rule 59(a) provides that rehearing or reconsideration may be granted: “(A) for any reason for which a new trial has heretofore been granted in an action at law in federal court; (B) for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court; or (C) upon the showing of satisfactory evidence, cumulative or otherwise, that any fraud, wrong, or injustice has been done to the United States.” RCFC 59(a)(1). The Federal Circuit interprets RCFC 59 to require: “an intervening change in the controlling law, newly discovered evidence, or a need to correct clear factual or legal error or prevent manifest injustice.” *Biery v. United States*, 818 F.3d 704, 711 (Fed. Cir. 2016) (quoting *Young v. United States*, 94 Fed.Cl. 671, 674 (Fed. Cl. 2010)); *see also Johnson v. United States*, 126 Fed. Cl. 558, 560 (2016) (citing *Bishop v. United States*, 26 Cl.Ct. 281, 286 (1992)).

To interpret “manifest injustice,” courts define “manifest” as “[c]learly apparent to the sight or understanding; obvious.” *Pac. Gas & Elec. Co. v. United States*, 74 Fed. Cl. 779, 785 (2006), *aff’d in part and rev’d in part*, 536 F.3d 1282 (Fed. Cir. 2008) (quoting *American Heritage Dictionary* at 1064 (4th ed.2000)); *see also Ammex, Inc. v. United States*, 52 Fed. Cl. 555, 557 (2002). So, the phrase “manifest [in]justice . . . refers to injustice that is apparent to the point of being almost indisputable.” *Id.* A motion for reconsideration to prevent manifest injustice is rarely granted. *See Delaware Valley Floral Grp., Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1384 (Fed. Cir. 2010) (stating that motions to reconsider to prevent manifest injustice should be granted rarely); *Ingham Reg’l Med. Ctr. v. United States*, 155 Fed. Cl. 1, 19 (2021) (rejecting a motion for reconsideration to prevent manifest injustice because the party was “seeking to raise the same arguments previously made and ruled on by the Court”); *Shirlington Limousine & Transp., Inc. v. United States*, 78 Fed. Cl. 27, 31 (2007) (holding that a litigant

being “bound” to choose between the “GAO and the United States Court of Federal Claims” does not prevent manifest injustice, “but merely requires a plaintiff to weigh litigating options”).

a. *Qui Tam* Claims

Plaintiff’s primary RCFC 59(a) argument is restating his *qui tam* claims. However, “[i]t is unequivocal that this court lacks jurisdiction to hear *qui tam* suits.” Op. at 9; *Downey v. United States*, No. 19-899C, 2019 WL 4014204 at *3 (Fed. Cl. Aug. 23, 2019) (citing *LeBlanc*, 50 F.3d at 1030–31). Even if a prior court had found that Plaintiff was an original realtor—which they did not—District Court is still the only jurisdiction where a *qui tam* claim may be heard. See *LeBlanc v. United States*, 50 F.3d 1025, 1031 (Fed. Cir. 1995) (citing 31 U.S.C. § 3732(a)). Further, the Plaintiff “has not identified any intervening change in the controlling law” that would give the Court jurisdiction to decide his *qui tam* claim. *Johnson v. United States*, 126 Fed. Cl. 558, 560 (2016).

In relation to Plaintiff’s *qui tam* claim, Plaintiff makes a myriad of new accusations about his former attorneys. Pl. Mot. at 37-38. Including, that his former attorneys alleged conduct was one of the reasons he was not compensated as a *qui tam* realtor. See *id.* As a result of his former attorneys’ actions, Plaintiff argues there is a need for reconsideration to “prevent manifest injustice.” *Id.* The merits of this new argument do not need consideration, as this argument was not filed at the time of the complaint. See *Bluebonnet Sav. Bank, F.S.B. v. United States*, 466 F.3d 1349, 1361 (Fed. Cir. 2006) (dismissing government’s argument because it was not made until their motion for reconsideration). Even if the attorneys’ conduct could be considered, this Court still lacks jurisdiction to consider Plaintiff’s *qui tam* claim. See *Downey*, 2019 WL 4014204 at *3. To be clear, when a court has “no jurisdiction to confirm or reject, [courts have] no authority to inquire into or pass upon the case, beyond...the question of jurisdiction.” *United*

States v. Baca, 184 U.S. 653, 659 (1902); *see also Peretz v. United States*, No. 2021-1831, 2022 WL 1232118 at *6 (Fed. Cir. Apr. 26, 2022) (holding that the “Claims Court was unable to proceed to the merits once it determined that it did not have jurisdiction”).

b. Contract Claims

Plaintiff also argues this Court erred by finding it lacked jurisdiction to hear his contract claim. *See* Pl. Recons. Mot. 13-14. Specifically, that this Court mistakenly found “at best an implied-in-law contract” when, Plaintiff argues, there was an implied-in-fact contract. *Id.* Yet, Plaintiff fails to identify any new facts unavailable at the time of litigation. Instead, Plaintiff argues that an “implied-in-fact contract should should...exist” because he was “Amgen’s former employee.” *Id.* Plaintiff being a former employer of Amgen is not a new fact and does not change the status of his contract claim. *See* Op. at 9-12. Nor has Plaintiff identified any “intervening changes in the controlling law” that would reclassify the contract claim or grant this court jurisdiction over an implied-in-law contract claim. *Biery v. United States*, 818 F.3d 704, 711 (Fed. Cir. 2016) (quoting *Young v. United States*, 94 Fed.Cl. 671, 674 (Fed. Cl. 2010)).

Likewise, Plaintiff argues that this Court erred by deciding that he was not in contractual privity with the Amgen settlement and thus, lacked standing. *See* Pl. Recons. Mot. 13-14. Plaintiff argues as a former Amgen employee, contractual privity existed because he “was a direct beneficiary under state and federal law.” *Id.* at 14. Plaintiff’s argument does not meet the high bar for reconsideration because he is “rais[ing] the same arguments previously made and ruled on by the Court.” *Ingham Reg'l Med. Ctr. v. United States*, 155 Fed. Cl. 1, 19 (2021); Op. at 12.

In addition, Plaintiff states this Court improperly found his contract claim was outside the statute of limitations. *See* Pl. Recons. Mot. at 2-5. He argues that the continuing claims doctrine

brings his contract, and *qui tam*, claims inside the statute of limitations. *See id.* Even if this were true, this Court can still not consider Plaintiff's contract claims because, as previously explained, this Court cannot consider the merits when it lacks jurisdiction and the Plaintiff lacks standing. *See Peretz v. United States*, 2022 WL 1232118 at *6; Op. at 9.

Plaintiff's final contract argument is that the Government represented that his challenge to the Corporate Integrity Agreement should be brought in this court. *See* Pl. Recons. Mot. at 7-8. Whether or not this is true, it does not guarantee a ruling in Plaintiff's favor.

c. Review of Circuit and District Court Decisions

Furthermore, Plaintiff argues that the District Court for the Northern District of California and the Ninth Circuit erred by dismissing his *qui tam* claim for proceeding *pro se*. This Court, however, has no jurisdiction to review those decisions. *See Kimbrell v. United States*, No. 17-495C, 2021 WL 1906254 at *4 (Fed. Cl. May 12, 2021) (citing *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (“[T]he Court of Federal Claims does not have jurisdiction to review the decisions of district courts....”), (28 U.S.C. § 1254 (“Cases in the courts of appeals may be reviewed by the Supreme Court ... [b]y writ of certiorari....”))).

2. RCFC 60

Courts may also reconsider a decision pursuant to RCFC 60. Under RCFC 60(a), a “court may correct a clerical mistake or a mistake arising from oversight or omission wherever one is found.” RCFC 60(a). RCFC 60(b) allows a court to “relieve a party...from a final judgment, order, or proceeding for the following reasons:”

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under RCFC 60(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

RCFC 60(b)(1)-(6). RCFC 60(b)(6) is a “catch-all category,” that may only be applied in “extraordinary circumstances.” *Peretz v. United States*, No. 2021-1831, 2022 WL 1232118 at *6 (Fed. Cir. Apr. 26, 2022), then *id.* (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863–64 (1988)). As the Government notes, Gov. Resp. at 3, RCFC 60(b)(1) and 60(b)(6) are “mutually exclusive,” so that a party cannot obtain relief on both grounds. *Delpin Aponte v. United States*, No. 05-1043C, 2014 WL 3725933 at *1 n.2 (Fed. Cl. July 23, 2014) (citing *Stevens v. Miller*, 676 F.3d 62, 67 (2nd Cir. 2012)).

Furthermore, motions for reconsideration must be supported “by a showing of extraordinary circumstances which justify relief.” *Caldwell v. United States*, 391 F.3d 1226, 1235 (Fed. Cir. 2004) (quoting *Fru-Con Constr. Corp. v. United States*, 44 Fed. Cl. 298, 300 (1999), *aff’d*, 250 F.3d 762 (2000)). Such a motion, however, “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (quoting 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2810.1 (2d ed. 1995)). In addition, “a motion for reconsideration is not intended . . . to give an ‘unhappy litigant an additional chance to sway’ the court.” *Matthews v. United States*, 73 Fed. Cl. 524, 525 (2006) (quoting *Froudi v. United States*, 22 Cl. Ct. 290, 300 (1991)).

On Plaintiff’s RCFC 60 arguments, he first identifies that RCFC 60(a) provides relief for “clerical mistakes; oversights and omissions.” RCFC 60(a); Pl. Recons. Mot. at 18. Contrary to Plaintiff’s assertion, this Court lacking jurisdiction to hear his *qui tam* claim was not an “oversight.” *Id.* And not finding an actionable contract claim were not “clerical mistakes;

oversights and omissions.” *Id.* Those claims were intentionally denied for procedural and substantive reasons. *See generally* Op. As a result, Plaintiff’s RCFC 60(a) argument should be denied.

Finally, Plaintiff cites RCFC 60(b)(6) which gives courts discretion to grant relief for “any other justified reason,” but should only be applied in “extraordinary circumstances.” *Peretz v. United States*, No. 2021-1831, 2022 WL 1232118 at *6 (Fed. Cir. Apr. 26, 2022), (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863–64 (1988)). Plaintiff does not, however, specify which of his arguments fall under RCFC 60(b)(6). *See* Pl. Recons. Mot. at 17. Regardless of Plaintiff’s ambiguity, he reargues the same points that have already been considered by this Court. Doing so is simply not an “extraordinary circumstance[]” to apply RCFC 60(b)(6). *Peretz*, 2022 WL 1232118 at *6 (affirming a Court of Claims RCFC 60(b)(6) denial because the plaintiff “re-assert[ed]...arguments he had previously made during...motion to dismiss); *see also IAP Worldwide Servs., Inc. v. United States*, 141 Fed. Cl. 788, (2019) (quoting *Cyios Corp. v. United States*, 124 Fed. Cl. 107, 113 (2015) (“[e]xamples of extraordinary circumstances include: (1) the conduct of proceedings without the knowledge of the losing party; (2) unusual combinations of health and financial difficulties; or (3) gross negligence or severe misconduct by counsel”)).

In sum, for the aforementioned reasons, Plaintiff’s motion for reconsideration should be denied.

B. Request for Leave to File Notice of Motion to Add Third Party Intervener

RCFC 14(b) allows “[t]he court, on motion or on its own, [to] notify any person with the legal capacity to sue or to be sued who is alleged to have an interest in the subject matter of the suit.” However, “[a] plaintiff must file any motion for notice at the time the complaint is filed.”

RCFC 14(b)(2)(B)(i). Alternatively, “[f]or good cause shown, the court may allow a motion for notice to be filed at a later time.” RCFC 14(b)(2)(B)(iii). To determine if “‘good cause’ exists, the Court takes into consideration (i) the reasons for defendant's post-answer filing and for any delays in filing, and (ii) whether Plaintiff is prejudiced by the delayed filing.” *Sci. Applications Int'l Corp. v. United States*, 148 Fed. Cl. 268, 271 (2020). Relevant here, good cause does not exist when the movant was aware of the third party’s relation to the case before the motion. *See Morphotrust USA, LLC v. United States*, No. 16-227, 2017 WL 4081812, at *1-2 (Fed. Cl. Sept. 15, 2017) (denying RCFC 14(b) motion because movant was aware of the third party’s relation to the case prior to the motion).

RCFC 24(b) gives courts discretion to grant third-party motions for permissive intervention when the third party “has a claim or defense that shares with the main action a common question of law or fact.” RCFC 24(b)(1)(B). To be clear, RCFC 24(b) does not allow a current party to the litigation to add a third party. *See* RCFC 24(b); *John R. Sand & Gravel Co. v. Brunswick Corp.*, 143 F. App'x 317, 318 (Fed. Cir. 2005) (considering third party’s RCFC 24(b) motion to intervene); *Freeman v. United States*, 50 Fed. Cl. 305, 310 (2001) (evaluating third party’s RCFC 24(b) motion to intervene).

In this case, Plaintiff moves under RCFC 14(b) and RCFC 24(b)¹ in their request for leave to file notice of motion to add third-party intervenor. Neither can be used by Plaintiff.

First, RCFC 14(b) requires “‘any motion for notice at the time the complaint is filed,’ or ‘[f]or good cause shown, the court may allow a motion for notice to be filed at a later time.’” Gov. Resp. at 8 (quoting RCFC 14(b)(2)(b)). Here, Plaintiff did not file the motion at the time of the complaint but waited till after filing their motion for reconsideration. Further, good cause

¹ Plaintiff cites “Rule 24(b).” Pl. Inter. Mot. at 1. This memorandum assumes RCFC 24(b) is the rule Plaintiff references.

does not exist because Plaintiff knew of Amgen's relationship to the case prior to the motion. *See Morphotrust USA, LLC v. United States*, No. 16-227, 2017 WL 4081812, at *1-2 (Fed. Cl. Sept. 15, 2017) (denying RCFC 14(b) motion because movant was aware of the third party's relation to the case prior to the motion). In fact, many of Plaintiff's arguments rely on their former employment with Amgen, and Amgen's settlement with the government. *See generally* Pl. Compl.

Second, RCFC 24(b) provides a court discretion to grant permissive intervention to a *third-party* movant. It cannot be used by a current party to the litigation—like Plaintiff. *See* RCFC 24(b); *John R. Sand & Gravel Co. v. Brunswick Corp.*, 143 F. App'x 317, 318 (Fed. Cir. 2005) (considering third party's RCFC 24(b) motion to intervene); *Freeman v. United States*, 50 Fed. Cl. 305, 310 (2001) (evaluating third party's RCFC 24(b) motion to intervene). Finally, the concurrent motion for reconsideration should be denied removing any litigation to add a third-party to. Accordingly, Plaintiff's request for leave to file notice of motion to add third-party intervenor should be denied.

IV. Conclusion

In sum, plaintiff's motion for reconsideration, ECF No. 32, and request for leave to file notice of motion to add third-party intervenor, ECF No. 33, should be denied.

Applicant Details

First Name **Matthew**
 Middle Initial **L**
 Last Name **Krantz**
 Citizenship Status **U. S. Citizen**
 Email Address mlkrantz@alumni.stanford.edu
 Address

Address
Street
770 5th Street NW Apartment 716
City
Washington
State/Territory
District of Columbia
Zip
20001
Country
United States

Contact Phone Number **(216) 470-5164**

Applicant Education

BA/BS From **Dartmouth College**
 Date of BA/BS **June 2016**
 JD/LLB From **Stanford University Law School**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90515&yr=2011
 Date of JD/LLB **June 12, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Stanford Law Review**
Stanford Technology Law Review
 Moot Court Experience **No**

Bar Admission

Admission(s) **District of Columbia**

Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	Yes

Specialized Work Experience

Recommenders

O'Connell, Anne
 a joseph oconnell@law.stanford.edu
 Engstrom, David Freeman
 dfengstrom@law.stanford.edu
 650-723-9148

Sykes, Alan
 asykes@law.stanford.edu
 (650) 724-0718

Letter, Dean's
 deansletter@law.stanford.edu
 650-723-4455

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Matthew L. Krantz

770 5th Street NW Apartment 716, Washington, D.C. 20001
mlkrantz@alumni.stanford.edu • (216) 470-5164

March 23, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I was excited to hear of your recent confirmation to the United States District Court for the Eastern District of Virginia. I am a graduate of Stanford Law School, and I write to apply to serve as your law clerk in 2024-2025. I will be clerking for the Honorable Cheryl Ann Krause on the Third Circuit in 2023-2024, and I would be grateful for the chance to work with you in the following year.

Enclosed you will find my resume, references, law school transcript, and writing sample. Professor David Freeman Engstrom, Professor Anne Joseph O'Connell, and Professor Alan O. Sykes have written letters of recommendation in support of my application.

I welcome the opportunity to discuss my qualifications further. Thank you for your consideration.

Sincerely,



Matthew Louis Krantz

Matthew L. Krantz

770 5th Street NW Apartment 716, Washington, D.C. 20001
mlkrantz@alumni.stanford.edu • (216) 470-5164

EDUCATION

Stanford Law School, Stanford, CA June 2022
J.D.
Honors: Gerald Gunther Prize for Outstanding Performance in Torts; John Hart Ely Prize for Outstanding Performance in Innovating Privacy Protection
Journals: *Stanford Law Review* (Managing Editor, Vol. 74; Member Editor, Vol. 73)
Stanford Technology Law Review (Symposium Chair, Vol. 24; Member Editor, Vol. 23)
Activities: Jewish Law Students Association (Mentorship Chair); OutLaw (Member)

Dartmouth College, Hanover, NH June 2016
A.B., *summa cum laude*, in Computer Science and Chinese
Honors: Phi Beta Kappa; Citation for Academic Excellence in Algorithms
Activities: Dartmouth Outing Club First-Year Trips (Trip Leader and Support Crew Member); Outdoor Leadership Experience (Volunteer); CS 1 Teaching Assistant

EXPERIENCE

United States Court of Appeals for the Third Circuit, Philadelphia, PA August 2023 – August 2024
Law Clerk to the Honorable Cheryl Ann Krause

Latham & Watkins LLP, Washington, D.C. June 2021 – August 2023
Litigation Associate (October 2022 – August 2023)
Summer Associate (June 2021 – August 2021)

Juelsgaard Intellectual Property and Innovation Clinic, Stanford, CA March 2021 – March 2022
Certified Law Student

- Submitted comment on behalf of startup-advocacy nonprofit in Copyright Office rulemaking
- Wrote and filed two appellate briefs on behalf of intellectual property law professors

Professor Alan O. Sykes, Stanford Law School, Stanford, CA August 2020 – January 2021
Teaching Assistant for Torts

- Led weekly sessions to review torts doctrine and work through practice problems
- Drafted and evaluated midterm and final examinations

Electronic Privacy Information Center, Washington, D.C. June 2020 – August 2020
Law Clerk

- Drafted legal memoranda on COVID-19 tracking, biometric data use, and the CFAA
- Cowrote Supreme Court brief addressing proper scope of FOIA Exemption 5

Epic Systems, Madison, WI September 2016 – May 2019
Genetics Product Lead (April 2018 – May 2019)

- Worked with clinicians and Epic leadership to shape future vision of Genetics application
- Coordinated across roles to ensure successful installation and launch of Genetics module

Software Development Team Lead (January 2018 – May 2019)

- Managed and evaluated four-member Genetics team as lead software developer
- Oversaw project management and long-term development planning

Software Developer (September 2016 – January 2018)

- Migrated legacy view and infrastructure code to new Hyperspace Web framework
- Primary developer contact for tobacco and family histories

ADDITIONAL INFORMATION

Programming: C#/.NET, TypeScript, JavaScript, HTML, CSS, Java, Python, C
Interests: Architecture, Technology, Summer Camp

Matthew L. Krantz

770 5th Street NW Apartment 716, Washington, D.C. 20001
mlkrantz@alumni.stanford.edu • (216) 470-5164

RECOMMENDERS

Professor David Freeman Engstrom
Stanford Law School
(650) 721-5859
dfengstrom@law.stanford.edu

Professor Anne Joseph O'Connell
Stanford Law School
(650) 736-8721
ajosephoconnell@law.stanford.edu

Professor Alan O. Sykes
Stanford Law School
(650) 736-8090
asykes@law.stanford.edu

REFERENCES

Professor Phillip R. Malone
Stanford Law School
(650) 725-6369
pmalone@law.stanford.edu

Professor Anna A. Mance
SMU Dedman School of Law
(414) 534-2803
amance@smu.edu

Jeramie D. Scott
Electronic Privacy Information Center
(202) 483-1140
jscott@epic.org

VERIFIED STANFORD OFFICIAL TRANSCRIPT IN PDF FORMAT ONLY



STANFORD UNIVERSITY
OFFICE OF THE UNIVERSITY REGISTRAR
STANFORD, CA 94305-6032

Name: Krantz, Matthew Louis
Student ID: 05786653

Johanna Metzgar
Johanna Metzgar
Registrar

In accordance with USC 438 (6) (4) (8) (The Family Educational Rights and Privacy Act of 1974), you are hereby notified that this information is provided upon the condition that you, your agents or employees will not permit any other party access to this record without consent of the student. Alteration of this transcript may be a criminal offense.

Print Date: 08/28/2022

----- Stanford Degrees Awarded -----

Degree : Doctor of Jurisprudence
Confer Date : 06/12/2022
Plan : Law

----- Academic Program -----

Program : Law JD
09/23/2019 : Law (JD)
Completed Program

----- Beginning of Academic Record -----

2019-2020 Autumn

Course	Title	Attempted	Earned	Grade
LAW 201	CIVIL PROCEDURE I David Freeman Engstrom	5.00	5.00	H
LAW 205	CONTRACTS Barbara Fried	5.00	5.00	H
LAW 219	LEGAL RESEARCH AND WRITING Ji Seon Song	2.00	2.00	H
LAW 223	TORTS Gerald Gunther Prize for Outstanding Performance Alan Sykes	5.00	5.00	H
LAW 240G	DISCUSSION (1L): INNOVATION AND INEQUALITY Lisa Ouellette	1.00	1.00	MP

2019-2020 Winter

Some winter LAW courses graded MPH/F (Mandatory Pass-Health) due to pandemic.

Course	Title	Attempted	Earned	Grade
LAW 203	CONSTITUTIONAL LAW Jenny Martinez	3.00	3.00	MPH
LAW 207	CRIMINAL LAW Robert Weisberg	4.00	4.00	MPH
LAW 224A	FEDERAL LITIGATION IN A GLOBAL CONTEXT: COURSEWORK Anna Mance	2.00	2.00	MPH
LAW 2401	ADVANCED CIVIL PROCEDURE Diego Zambrano	3.00	3.00	MPH

2019-2020 Spring

All spring LAW courses graded MPH/F (Mandatory Pass-Health) due to pandemic.

Course	Title	Attempted	Earned	Grade
LAW 217	PROPERTY Mark Kelman	4.00	4.00	MPH
LAW 224B	FEDERAL LITIGATION IN A GLOBAL CONTEXT: METHODS AND PRACTICE Anna Mance	2.00	2.00	MPH
LAW 4005	INTRODUCTION TO INTELLECTUAL PROPERTY Mark Lemley	4.00	4.00	MPH
LAW 4050	AI AND RULE OF LAW: A GLOBAL PERSPECTIVE David Freeman Engstrom; Marietje Schaake	2.00	2.00	MPH

2020-2021 Autumn

Course	Title	Attempted	Earned	Grade
LAW 807S	POLICY PRACTICUM: INNOVATING PRIVACY PROTECTION: TOOLS AND STRATEGIES FOR CALIFORNIA CITIES John Hart Ely Prize for Outstanding Performance Phillip Malone; Tom Rubin	2.00	2.00	H
LAW 4015	MODERN SURVEILLANCE LAW Richard Salgado; Todd Hinnen	2.00	2.00	H
LAW 7001	ADMINISTRATIVE LAW Anne O'Connell	4.00	4.00	H
LAW 7041	STATUTORY INTERPRETATION Jane Schacter	3.00	3.00	P
LAW 7101	ELECTION 2020 James Steyer; Pamela Karlan	1.00	1.00	MP

2020-2021 Winter

Course	Title	Attempted	Earned	Grade
LAW 2402	EVIDENCE George Fisher	5.00	5.00	P
LAW 4001	MEDIA, TECHNOLOGY, AND THE FIRST AMENDMENT Barbara van Schewick	3.00	3.00	H
LAW 4046	DATA: PRIVACY, PROPERTY AND SECURITY Paul Goldstein; Tom Rubin	3.00	3.00	P

Send To: Matt Krantz
USA

This document has been digitally signed and therefore contains special characteristics. A document that contains a digital signature can be instantly validated. See final page of this PDF for further explanation.